

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STRAITSHOT RC, LLC, a Delaware limited
liability company,

Plaintiff,

v.

TELEKENEX, INC., a Delaware corporation;
MARK PRUDELL and JOY PRUDELL,
husband and wife and the marital community
composed thereof; MARK RADFORD and
NIKKI RADFORD, husband and wife and the
marital community composed thereof,
JOSHUA SUMMERS and JULIA
SUMMERS, husband and wife and the marital
community composed thereof; ANTHONY
ZABIT and JANE DOE ZABIT, husband and
wife and the marital community composed
thereof; BRANDON CHANEY and JANE
DOE CHANEY, husband and wife and the
marital community composed thereof,
MAMMOTH NETWORKS, LLC, and
BRIAN WORTHEN and JANE DOE
WORTHEN, husband and wife and the
marital community composed thereof,

Defendants.

CASE NO. C10-268 TSZ

**FOURTH AMENDED COMPLAINT
FOR DAMAGES**

TELEKENEX, INC., a Delaware Corporation,

Third-Party Plaintiff,

v.

STRAITSHOT RC, LLC, a Delaware limited
liability company; STEPHEN PERRY and
JANE DOE PERRY, and the marital
community composed thereof; and ANDREW
GOLD and JANE DOE GOLD, and the
marital community composed thereof,

Third-Party Defendants.

FOURTH AMENDED COMPLAINT FOR DAMAGES
CASE NO. C10-268 TSZ

SUMMIT LAW GROUP PLLC
315 FIFTH AVENUE SOUTH, SUITE 1000
SEATTLE, WASHINGTON 98104-2682
Telephone: (206) 676-7000
Fax: (206) 676-7001

MAMMOTH NETWORKS, LLC, a Wyoming
limited liability company,

Third-Party Plaintiff,

v.

CLARITAGE STRATEGY FUND, L.P., a
Cayman Islands limited partnership, and
STRAITSHOT RC, LLC, a Delaware limited
liability company,

Third-Party Defendants.

I. INTRODUCTION

1. This case arises out of a series of unlawful schemes agreed to and perpetrated by Defendants in order to steal the trade secrets and confidential customer information of Straitshot, to cover-up this theft through the destruction of evidence, and to continuously use the stolen trade secrets and confidential customer information in order to abscond with, and ultimately destroy, the business of Straitshot for Defendants' benefit.

II. PARTIES

2. Plaintiff Straitshot. Straitshot Communications, Inc. ("Straitshot") was a corporation organized under the laws of the State of Washington and authorized to conduct business in the State of Washington. Its principal place of business was in Bellevue, Washington.

3. Defendant Telekenex. Telekenex, Inc. ("Telekenex") is a corporation organized under the laws of the State of Delaware. Its principal place of business is in San Francisco, California. Telekenex maintains an office in Seattle, Washington and is registered to do business in the State of Washington.

4. Defendants Prudell. Mark Prudell ("Prudell") and Joy Prudell are residents of Renton, Washington. Mark and Joy Prudell are and were at all relevant times husband and wife, constituting a marital community under the laws of the State of Washington. All acts performed by Prudell were for himself individually and on behalf of the marital community.

1 5. Defendants Radford. Mark Radford (“Radford”) and Nikki Radford are residents
2 of Vancouver, Washington. Mark and Nikki Radford are and were at all relevant times husband
3 and wife, constituting a marital community under the laws of the State of Washington. All acts
4 performed by Radford were for himself individually and on behalf of the marital community.

5 6. Defendants Summers. Joshua Summers (“Summers”) and Julia Summers are
6 residents of Issaquah, Washington. Joshua and Julia Summers are and were at all relevant times
7 husband and wife, constituting a marital community under the laws of the State of Washington.
8 All acts performed by Summers were for himself individually and on behalf of the marital
9 community.

10 7. Defendants Zabit. Anthony Zabit (“Zabit”) and Jane Doe Zabit are residents of the
11 State of California. Anthony and Jane Doe Zabit, on information and belief, are and were at all
12 relevant times husband and wife, constituting a marital community. All acts performed by Zabit
13 were for himself individually and on behalf of the marital community. Zabit is the President of
14 Telekenex.

15 8. Defendants Chaney. Brandon Chaney (“Chaney”) and Jane Doe Chaney are
16 residents of the State of California. Brandon and Jane Doe Chaney, on information and belief, are
17 and were at all relevant times husband and wife, constituting a marital community. All acts
18 performed by Chaney were for himself individually and on behalf of the marital community.
19 Chaney is the Chief Executive Officer of Telekenex.

20 9. Defendant Mammoth. Mammoth Networks, LLC (“Mammoth”) is a Wyoming
21 limited liability company.

22 10. Defendants Worthen. Brian Worthen (“Worthen”) and Jane Doe Worthen are
23 residents of the State of Wyoming. Brian and Jane Doe Worthen, on information and belief, are
24 and were at all relevant times husband and wife, constituting a marital community. All acts
25 performed by Worthen were for himself individually and on behalf of the marital community.
26 Worthen is the Chief Executive Officer of Mammoth.

III. JURISDICTION AND VENUE

11. Subject Matter Jurisdiction. Telekenex, Prudell, Radford and Summers removed this lawsuit on February 12, 2010 on the basis of the RICO Act and pendent and/or supplemental jurisdiction of the state law causes of action.

12. Venue. Venue in this removed case is proper under 28 U.S.C. 1446(a). Venue also is proper in this District pursuant to 28 U.S.C. 1391(b).

IV. FACTS

13. Straitshot's Business. Straitshot was a managed network service provider. Straitshot enabled enterprises to share mission-critical data, voice and hosted applications between multiple locations. Most of its customers were small and medium-sized companies and all had entered into service contracts with Straitshot that included a committed term, generally between 18-36 months or longer.

14. Mammoth Contract. Mammoth had been providing services to Straitshot since at least early 2007. In January 2008, as part of a strategic partnership between Mammoth and Straitshot to purchase a significant amount of network capacity from Qwest Communications, Mammoth entered into a contract with Straitshot to supply circuits to Straitshot (the "Mammoth Contract"). Straitshot, in turn, used those circuits to build managed networks for Straitshot's customers.

15. Mammoth Confidentiality Clause. Paragraph 10 of the Mammoth Contract provides as follows:

Neither Party shall disclose to any third party during the term of this Agreement and for one (1) year following the expiration or termination hereof, (a) any of the terms of this Agreement, including pricing; (b) the existence, negotiations, or result of any arbitrations or settlements hereto; or (c) any other confidential or proprietary information of the other Party disclosed during the term of this Agreement.

1 16. Telekenex's Business. According to its website, www.telekenex.com, Telekenex
2 "is a business-grade IP service provider with a robust private international IP network" serving
3 "enterprise voice and data customers." Telekenex and Straitshot were competitors.

4 17. Telekenex Approaches Straitshot. Beginning in October 2008 and continuing
5 through February 2009, Telekenex made overtures to Straitshot suggesting the companies consider
6 combining their resources. Although Straitshot supplied Telekenex with substantial information
7 about Straitshot's business, Telekenex refused to do the same.

8 18. Prudell Employed by Straitshot. Prudell signed an employment contract with
9 Straitshot effective April 18, 2007 (the "Prudell Employment Contract"). Prudell served as
10 Straitshot's Regional Sales Director until January 16, 2009. He was responsible for generating
11 leads, developing opportunities, closing new sales and supporting existing customers as they
12 developed new requirements. He retained responsibility for customer relationship management,
13 including serving as the point of contact for customers who were experiencing difficulties with
14 other functional areas of the company. Since early 2008, all Straitshot opportunities – whether
15 generated by him, Radford, a channel or wholesale partner, existing customers or any other
16 manner – were managed from a sales perspective by Prudell and Radford. Prudell had complete
17 access to all confidential commercial, technical and financial information regarding Straitshot
18 customers.

19 19. Prudell's Non-Competition and Confidentiality Obligation. Paragraph 7 of the
20 Prudell Employment Contract provides:

21 In the event you do not continue employment with the Company for
22 any reason, you agree that, except to or for the benefit of the
23 Company, its subsidiaries and affiliates, you will not use or
24 communicate or divulge to any person, firm or corporation, either
25 directly or indirectly, any confidential or proprietary information
26 relating to the business, customers, suppliers, shareholders or other
persons or entities affiliated with the Company, its parent,
subsidiaries and their affiliates. Without limiting the foregoing, all
information concerning procedures and strategy of the Company, its
subsidiaries, parent and their affiliates shall be deemed confidential
and proprietary information.

(Emphasis added.)

20. Prudell's Non-Solicitation Obligation. Paragraph 8 of the Prudell Employment Contract provides:

Non-Solicitation. For a period of twelve (12) months immediately following the termination of your relationship with the Company for any or no reason, whether with or without cause, you shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company's employees to leave their employment, or take away such employees, or attempt to solicit, induce, recruit, encourage or take away employees of the Company, either for yourself or for any other person or entity.

(Emphasis added.)

21. Prudell's Obligation to Return Straitshot Documents. Paragraph 10 of the Prudell Employment Contract provides:

Technical Records. Immediately upon the Company's request and promptly upon termination of this Agreement, you shall deliver to the Company all memoranda, notes, records, reports, photographs, drawings, plans, papers, or other documents made or compiled by you in the process of carrying out, or made available to you in relation to your employment with the Company under this Agreement, and any copies or abstracts thereof, whether or not of a secret or confidential nature, and all of such memoranda and other documents shall, during and after the termination of this Agreement, be the exclusive property of the Company.

22. Radford Employment by Straitshot. Radford signed an employment contract with Straitshot effective June 1, 2007 (the "Radford Employment Contract"). Radford served as Straitshot's Regional Sales Director until January 16, 2009. He was responsible for generating leads, developing opportunities, closing new sales and supporting existing customers as they developed new requirements. He retained responsibility for customer relationship management, including serving as the point of contact for customers who were experiencing difficulties with other functional areas of the company. Since early 2008, all Straitshot opportunities – whether generated by him, Prudell, a channel or wholesale partner, existing customers or any other manner

– were managed from a sales perspective by Prudell and Radford. Radford had complete access to all confidential commercial, technical and financial information regarding Straitshot customers.

23. Radford's Non-Competition and Confidentiality Obligation. Paragraph 6 of the Radford Employment Contract provides:

In the event you do not continue employment with the Company for any reason, you agree that, except to or for the benefit of the Company, its subsidiaries and affiliates, you will not use or communicate or divulge to any person, firm or corporation, either directly or indirectly, any confidential or proprietary information relating to the business, customers, suppliers, shareholders or other persons or entities affiliated with the Company, its parent, subsidiaries and their affiliates. Without limiting the foregoing, all information concerning procedures and strategy of the Company, its subsidiaries, parent and their affiliates shall be deemed confidential and proprietary information.

(Emphasis added.)

24. Radford's Non-Solicitation Obligation. Paragraph 7 of the Radford Employment Contract provides:

Non-Solicitation. For a period of twelve (12) months immediately following the termination of your relationship with the Company for any or no reason, whether with or without cause, you shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company's employees to leave their employment, or take away such employees, or attempt to solicit, induce, recruit, encourage or take away employees of the Company, either for yourself or for any other person or entity.

(Emphasis added.)

25. Radford's Obligation to Return Straitshot Documents. Paragraph 9 the Radford Employment Contract provides:

Technical Records. Immediately upon the Company's request and promptly upon termination of this Agreement, you shall deliver to the Company all memoranda, notes, records, reports, photographs, drawings, plans, papers, or other documents made or compiled by you in the process of carrying out, or made available to you in relation to your employment with the Company under this Agreement, and any copies or abstracts thereof, whether or not of a secret or confidential nature, and all of such memoranda and other documents shall, during and after the termination of this Agreement, be the exclusive property of the Company.

OCTOBER 2008

26. October 10, 2008. On October 10, 2008, while he was employed by Straitshot, Prudell, in Washington, e-mailed Zabit, in California: "I'm open for a call at any time."

27. October 21, 2008. On October 21, 2008, while he was employed by Straitshot, Prudell, in Washington, e-mailed Chaney, in California, confidential Straitshot information regarding an opportunity to sell services to Snoqualmie Casino. Straitshot had expended significant resources in the preceding months developing Snoqualmie Casino as a customer and Prudell and Radford had identified it in their Straitshot sales pipeline reports for months. Despite this, Prudell and Radford perpetrated a scheme to send Telekenex confidential information regarding this sales opportunity that rightfully belonged to Straitshot.

28. October 27, 2008. On October 27, 2008, a Telekenex employee, in California, e-mailed Snoqualmie Casino, in Washington, to solicit business based on the referral from Prudell.

NOVEMBER 2008

29. Restructuring of Straitshot's Business. In November 2008, Straitshot determined that it needed to restructure its business with an infusion of new capital.

30. Request for Deferral by Mammoth. To accomplish this restructuring, Straitshot turned to Mammoth, its second largest circuit vendor, and requested that Mammoth defer Straitshot's payment of \$120,000 of service fees that would come due in November and December 2008 until 2010. This would give Straitshot the flexibility it needed to successfully complete the restructuring.

31. Mammoth's Agreement to Defer Payment. In November 2008, Worthen traveled to New York to meet with Straitshot's CEO Andrew Gold and a principal investor supporting the planned restructuring. Worthen agreed to Straitshot's request to defer payment of \$120,000 for November and December 2008 service fees until 2010 and to pay subsequent Mammoth invoices when they came due (the "Deferral Agreement").

1 32. Straitshot Proceeds With Planned Restructure. On the basis of Mammoth's
2 Deferral Agreement, Straitshot determined that it could and would proceed with its restructuring
3 plan.

4 33. November 11, 2008. On November 11, 2008, while he was employed by
5 Straitshot, Prudell, in Washington, e-mailed Chaney, in California, confidential Straitshot
6 information regarding an opportunity to sell services to Shari's Restaurants. Straitshot had
7 expended significant resources in the preceding months developing Shari's Restaurants as a
8 customer and Prudell and Radford had identified it in their Straitshot sales pipeline reports for
9 months. Despite this, Prudell and Radford perpetrated a scheme to send Telekenex confidential
10 information regarding this sales opportunity that rightfully belonged to Straitshot.

11 34. November 11, 2008. On November 11, 2008, while he was employed by
12 Straitshot, Prudell, in Washington, e-mailed Chaney, in California, confidential Straitshot
13 information regarding an opportunity to sell services to Straitshot customer Buffalo Exchange.
14 Prudell attached a confidential Straitshot spreadsheet containing the Straitshot circuit addresses,
15 customer phone numbers at each address, circuit capacities, circuit speeds, underlying carriers, and
16 Straitshot's pricing, along with a copy of Straitshot's sales order for Buffalo Exchange. Straitshot
17 had expended significant resources in the preceding months developing Buffalo Exchange as a
18 customer and Prudell and Radford had identified it in their Straitshot sales pipeline reports for
19 months. Despite this, Prudell and Radford perpetrated a scheme to send Telekenex confidential
20 information regarding this sales opportunity that rightfully belonged to Straitshot.

21 35. November 15-16, 2008. Prudell and Radford, while employed by Straitshot,
22 traveled from Washington to California and back on November 15-16, 2008 to meet with Chaney
23 at Telekenex's offices in San Francisco and discussed combining their efforts to solicit Straitshot
24 customers to abandon their Straitshot contracts and move to Telekenex.

25 36. November 19, 2008. On November 19, 2008, while Prudell and Radford were
26 employed by Straitshot, Chaney, in California, e-mailed Prudell and Radford, in Washington, that

1 Prudell and Radford “have a very strong funnel and prospects” and expressing Chaney’s interest to
2 work out a deal with Prudell and Radford.

3 37. November 19, 2008. On November 19, 2008, while he was employed by
4 Straitshot, Prudell, in Washington, e-mailed Chaney, in California, confidential Straitshot
5 information regarding Straitshot’s largest customer Evergreen Healthcare (“Evergreen”) and
6 informed Telekenex that Evergreen Healthcare “will follow us if we are at a company that can
7 deliver.” Prudell attached a confidential Straitshot spreadsheet containing the addresses of each of
8 the Evergreen sites.

9 38. Inviting Mammoth’s Participation. In November 2008, Prudell, in Washington,
10 communicated with Worthen, in Wyoming, and asked Worthen if Mammoth would provide
11 service to Straitshot customers that Prudell, Radford and Telekenex could convince to move to
12 Telekenex’s network. At this time Mammoth was under contract with Straitshot to provide
13 circuits to these Straitshot customers. Prudell gave Worthen Chaney’s phone number and asked
14 Worthen to call Chaney to discuss Mammoth’s role in moving Straitshot customers to Telekenex.

15 39. November 22, 2008. On or about November 22, 2008, while Mammoth was under
16 contract with Straitshot, Worthen, in Wyoming, called Chaney, in California, and agreed to a
17 scheme to move Straitshot’s customers, without Straitshot’s consent, to Telekenex’s network.
18 Through January 12, 2009 and while Mammoth was under contract with Straitshot, Worthen, in
19 Wyoming, had at least 11 other telephone conversations with Telekenex employees in California
20 in furtherance of this scheme. Worthen understood that Mammoth had the power to make a
21 success or failure of the plan to induce Straitshot’s customers to move to Telekenex’s network
22 without Straitshot’s consent because a substantial percentage of Straitshot’s circuits, and most of
23 those serving Straitshot’s largest and most profitable customers, ran through Mammoth’s
24 equipment and Mammoth had, from a technical standpoint, control over where Straitshot’s
25 customer circuits were directed.

1 40. November 24, 2008. On November 24, 2008, while he was employed by
2 Straitshot, Prudell, in Washington, e-mailed Chaney, in California, and advised him that Straitshot
3 had many circuits being supplied by Mammoth and that Worthen “wants the business to follow us
4 if we were to move to your company. That is why he is looking to speak with you. The revenues
5 should give you the ability to afford us and bring us on board. Thanks and more to come.”

6 41. November 25, 2008. On November 25, 2008, while he was employed by
7 Straitshot, Prudell, in Washington, e-mailed Chaney, in California, confidential Straitshot
8 information regarding an opportunity to sell services to Stokes Auction Group. This sales
9 opportunity rightfully belonged to Straitshot.

10 42. November 25, 2008. On or about November 25, 2008, Telekenex employee Karen
11 Salazar (“Salazar”), in California, spoke by telephone with Prudell, in Washington, regarding
12 Prudell and Radford signing an agreement with Telekenex to forward sales opportunities –
13 opportunities that Prudell and Radford generated while employed by Straitshot and using
14 Straitshot’s confidential information – to Telekenex in exchange for commissions. That day,
15 Salazar, in California, e-mailed to Prudell, in Washington, the Telekenex agent agreement and
16 advised Prudell that she had contacted Worthen, in Wyoming, while Mammoth was under contract
17 with Straitshot, and discussed moving Straitshot’s existing customers to Telekenex’s network
18 without Straitshot’s consent.

19 43. November 25, 2008. On or about November 25, 2008, while he was employed by
20 Straitshot, Prudell, in Washington, spoke by telephone with Telekenex employee Larry Bani
21 (“Bani”), in California, regarding Telekenex supplying quotes for the Straitshot opportunities
22 Prudell had funneled to Telekenex. That day, Prudell, in Washington, e-mailed to Salazar, in
23 California, confidential Straitshot information regarding an opportunity to sell services to Joie de
24 Vivre. Straitshot had expended significant resources in the preceding months developing Joie de
25 Vivre as a customer and Prudell and Radford had identified it in their Straitshot sales pipeline
26

1 reports for months. Despite this, Prudell and Radford sent to Telekenex confidential information
2 regarding this sales opportunity that rightfully belonged to Straitshot.

3 44. November 25, 2008. On November 25, 2008, while he was employed by
4 Straitshot, Prudell, in Washington, e-mailed to Joie de Vivre, in California, recommending that
5 Prudell schedule a telephone call or webinar with Joie de Vivre and Telekenex to discuss
6 Telekenex's capability to service Joie de Vivre.

7 45. November 25, 2008. On November 25, 2008, Telekenex employee Joel Ciniero
8 ("Ciniero"), in California, e-mailed to Prudell, in Washington, Telekenex's quote for Stokes
9 Auction Group and advised that he "will finish the other items that we discussed and send them
10 along."

11 46. November 26, 2008. On November 26, 2008, Ciniero, in California, e-mailed to
12 Prudell, in Washington, Telekenex's quote for Shari's Restaurants.

13 47. Prudell's e-mail address. In November 2008, while he was a Straitshot employee,
14 Prudell, in Washington, informed Worthen, in Wyoming, that Worthen should stop using Prudell's
15 Straitshot e-mail address and use, instead, Prudell's personal e-mail address to discuss moving
16 Straitshot's customers to Telekenex's network. The purpose of this request was to prevent
17 Straitshot from discovering Prudell's theft of Straitshot's trade secrets and confidential customer
18 information. Worthen, while Mammoth was under contract with Straitshot, agreed to Prudell's
19 request.

20 48. November 26, 2008. On November 26, 2008, while he was employed by
21 Straitshot, Radford, in Washington, e-mailed to Worthen, in Wyoming, while Mammoth was
22 under contract with Straitshot, a request that Mammoth price circuits for Radford and Prudell to
23 quote directly to customers, not on behalf of Straitshot. That day, Worthen, in Wyoming, e-
24 mailed to Radford and Prudell, in Washington, using non-Straitshot email addresses, with the
25 requested quotes "so they could be moved to any router at the core at a later date (like
26 Telekenex)."

DECEMBER 2008

49. December Payment. Pursuant to the Deferral Agreement, in December 2008 Straitshot paid the outstanding Mammoth invoices for services in September and October 2008 and \$4,050.92 of the December Mammoth invoice, leaving a deferred balance of \$120,000 from the November and December 2008 invoices.

50. December 1, 2008. On December 1, 2008, while he was employed by Straitshot, Prudell, in Washington, left a voicemail message for Ciniero, in California, regarding the Telekenex quote for Shari's Restaurants.

51. December 1, 2008. On or about December 1, 2008, while he was employed by Straitshot, Prudell, in Washington, spoke by telephone with Joie de Vivre Hotels, in California, about setting up a webinar for Joie de Vivre to review Telekenex's "product offering."

52. December 1, 2008. On December 1, 2008, while he was employed by Straitshot, Prudell, in Washington, e-mailed to Ciniero and Salazar, in California, to advise that Prudell had scheduled a meeting in California for Ciniero, Salazar and Joie de Vivre's representatives to go over Telekenex's "company history, products, support colo[cation], deal."

53. December 2, 2008. On December 2, 2008, while he was employed by Straitshot, Prudell, in Washington, e-mailed to Ciniero and Chaney, in California, confidential Straitshot information regarding an opportunity to sell services to The Neurology Center. Prudell attached to the e-mail Straitshot's confidential service proposal for The Neurology Center. Straitshot had expended significant resources in the preceding months developing The Neurology Center as a customer and Prudell and Radford had identified it in their Straitshot sales pipeline reports for months. Despite this, Prudell and Radford perpetrated a scheme to send Telekenex confidential information regarding this sales opportunity that rightfully belonged to Straitshot.

54. December 3, 2008. On or about December 3, 2008, while he was employed by Straitshot, Prudell, in Washington, spoke by telephone with representatives of The Neurology Center, in California, about taking its business to Telekenex. That day, Prudell, in Washington, e-

1 mailed to Ciniero and Chaney, in California, that he had spoken to The Neurology Center “and we
2 are a go we need to have a call next week with the customer.”

3 55. December 3, 2008. On December 3, 2008, while he was employed by Straitshot,
4 Prudell, in Washington, e-mailed to Chaney, in California to advise that he had scheduled a
5 meeting with Joie de Vivre to include Ciniero and Salazar with Prudell to join by telephone. He
6 wrote: “This is killer opportunity [sic] and a great fit for you. I have an agent in AZ and we are
7 closing a 40 point T-1 deal in January. We would like to visit them and set up a training so we can
8 sell the customer Telekenex.”

9 56. December 3, 2008. On December 3, 2008, while he was employed by Straitshot,
10 Radford, in Washington, e-mailed to Salazar, Chaney, and Ciniero, in California, the Telekenex
11 agency agreement with Radford’s signature.

12 57. December 9, 2008. On December 9, 2008, while he was employed by Straitshot,
13 Prudell, in Washington, e-mailed to Ciniero and Chaney, in California regarding The Neurology
14 Center stating that “we need to get Terry a sales order and MSA [Master Service Agreement]. Do
15 you have time for a call with him he wants to sign paper.”

16 58. December 12, 2008. On December 12, 2008, while they were employed by
17 Straitshot, Prudell and Radford, in Washington, spoke by telephone with Chaney, in California
18 about how Telekenex would solicit Straitshot’s customers by calling and e-mailing the customers
19 with confidential Straitshot customer information to be supplied by Prudell and Radford.

20 59. December 17-22, 2008. While Mammoth was under contract with Straitshot,
21 Worthen traveled from Wyoming to Seattle, Washington for a visit from December 17-22, 2008
22 and stayed in Prudell’s home and, on information and belief, discussed the plan for Mammoth to
23 move Straitshot’s customer circuits, without Straitshot’s consent, to Telekenex.

24 60. December 30, 2008. On December 30, 2008, while he was employed by Straitshot,
25 Prudell, in Washington, sent an instant message to Worthen, in Wyoming, while Mammoth was
26 under contract with Straitshot, stating: “Mark and I have a Telekenex call with the CEO on the 7th.”

JANUARY 2009

61. Mammoth Supplies Confidential Information to Telekenex. In January 2009, without Straitshot's knowledge or permission, Mammoth advised Telekenex of confidential and proprietary Straitshot information including what circuits Mammoth was supplying to Straitshot, the dates those circuits were installed, the terms of the Mammoth circuits being provided to Straitshot, and the prices Mammoth was charging Straitshot for those circuits.

62. January Payment. Pursuant to the Deferral Agreement, in January 2009 after Mammoth issued the January 2009 invoice, Straitshot paid the invoice.

63. January 7, 2009. On January 7, 2009, while Mammoth was under contract with Straitshot, Worthen, in Wyoming, spoke by telephone with Prudell, in Washington, regarding the benefits of Prudell and Radford going to work for Telekenex.

64. January 7, 2009. On January 7, 2009, while they were employed by Straitshot, Prudell and Radford, in Washington, spoke by telephone with Chaney, in California, regarding Straitshot customers that Prudell and Radford would solicit if Telekenex hired Prudell and Radford. That day, following the phone call, Radford, in Washington, e-mailed to Chaney, in California, a list of the top Straitshot customers that Prudell and Radford had "a high probability" of being able to successfully solicit if hired by Telekenex including Straitshot customers Evergreen and The Ram Restaurants.

65. January 10, 2009. On January 10, 2009, while Mammoth was under contract with Straitshot and in response to Straitshot's request to Mammoth for pricing of additional circuits for Straitshot customer Super Supplements, Worthen, in Wyoming, e-mailed Prudell and Radford, in Washington, asking: "Will Super Supplements wind up with Telekenex? Let's plan that out."

66. January 12, 2009. On January 12, 2009, Chaney and Zabit, in California, spoke by telephone with Prudell and Radford, in Washington, and offered Prudell and Radford employment with Telekenex.

1 67. January 13, 2009. On January 13, 2009, Chaney and Zabit, in California, spoke by
2 telephone with Prudell and Radford, in Washington, regarding the terms of Telekenex's offers of
3 employment to Prudell and Radford.

4 68. January 13, 2009. On January 13, 2009, Chaney, in California, e-mailed to
5 Radford and Prudell, in Washington, Telekenex's written offers of employment.

6 69. January 14, 2009. On or about January 14, 2009, while he was employed by
7 Straitshot, Prudell called Straitshot customer Evergreen and asked Evergreen to move its business
8 from Straitshot to Telekenex. That day, Prudell, in Washington, e-mailed Chaney and Zabit, in
9 California and reported that he "spoke to Evergreen and they want a call with you and Mammoth
10 tomorrow. ☺ Also please call Brian [Worthen] at Mammoth ... and get the cross connects on
11 order ASAP. Anthony [Zabit] or Brandon [Chaney] please call me on my cell" The cross
12 connects referenced were the circuitry required to connect Mammoth's network to Telekenex's
13 network to facilitate the plan to move Straitshot's existing customers to Telekenex's network
14 without Straitshot's consent.

15 70. January 14, 2009. On January 14, 2009, while Mammoth was under contract with
16 Straitshot, Worthen, in Wyoming, e-mailed Zabit, Chaney, and Telekenex employee John Holst
17 ("Holst"), in California, regarding "Network planning, timeline:"

18 I would like to visit your offices and meet with the three of you
19 when possible. I will be in Denver most of next week, and could
20 fly out at your convenience. It would be even more beneficial if
21 we could time a visit while Mark Prudell is at your office to
 establish a transition plan – I am well-versed in what can be
 transitioned and how quickly. Please advise.

22 The transition plan Worthen referred to was a key component of the plan to move Straitshot
23 customers to Telekenex's network without Straitshot's consent with the use of Straitshot's
24 confidential and proprietary information communicated by Mammoth to Telekenex. Worthen
25 informed Zabit, Chaney and Holst that Mammoth would continue to provide services to Straitshot
26 until the cross-connect between Mammoth and Telekenex could be built and the Straitshot

1 customers moved to Telekenex. Mammoth did not advise Straitshot of Mammoth's intent to cut
2 off services to Straitshot as soon as the cross-connect with Telekenex was completed.

3 71. January 15, 2009. On January 15, 2009, while he was employed by Straitshot,
4 Prudell, in Washington, spoke by telephone with Worthen, in Wyoming, while Mammoth was
5 under contract with Straitshot, in furtherance of the plan to move Straitshot's customer circuits off
6 Straitshot's network and onto Telekenex's network without Straitshot's consent.

7 72. January 15, 2009. On January 15, 2009, Holst, in California, e-mailed Worthen, in
8 Wyoming, while Mammoth was under contract with Straitshot, to make arrangements for a
9 connection from Mammoth's network to Telekenex's network for use in the schemes to move the
10 Straitshot customers' circuits from Straitshot to Telekenex without Straitshot's consent.

11 73. January 16, 2009. On January 16, 2009, Prudell submitted his resignation to
12 Straitshot.

13 74. January 16, 2009. On January 16, 2009, Radford submitted his resignation to
14 Straitshot.

15 75. Prudell and Radford Take Straitshot's Documents. When they quit their Straitshot
16 jobs, Prudell and Radford retained copies of Straitshot's confidential information about its
17 customers including names, contacts, circuit addresses, circuit sizes, network architecture and
18 configuration data, contract dates and terms, and contract prices. Prudell and Radford took an
19 electronic copy of large sections of Straitshot's CRM database, containing confidential Straitshot
20 customer names, addresses and phone numbers and provided the electronic copy to Telekenex for
21 use in soliciting Straitshot's customers.

22 76. Prudell and Radford Solicit Straitshot's Employees. Upon leaving their
23 employment with Straitshot, Prudell and Radford successfully solicited Straitshot engineers Josh
24 Summers, Sunil Modi, Justin Pauole, Scott McKay, and Stephan Dickason to leave Straitshot and
25 come to Telekenex.

1 77. January 20-22, 2009. Prudell and Radford traveled from Washington to California
2 and back on January 20-22, 2009 to meet with Chaney, Zabit and others at Telekenex's San
3 Francisco, California office to plan for the solicitation of Straitshot's customers, using the stolen
4 Straitshot confidential customer information without Straitshot's consent.

5 78. Straitshot Puts Telekenex on Notice of Prudell's Obligations to Straitshot. On
6 January 20, 2009, Straitshot's counsel wrote Chaney and Prudell that Straitshot had learned of
7 Prudell's employment with Telekenex and put Telekenex on notice that Prudell's Straitshot
8 Employment Contract prohibited him from wrongfully soliciting Straitshot customers. The letter
9 expressed Straitshot's expectation "that Telekenex will not take any steps to interfere with the
10 contractual obligations of Mr. Prudell or any other former Straitshot employees to Straitshot or
11 with Straitshot's relationships with its customers."

12 79. January 20, 2009. On January 20, 2009 while Mammoth was under contract with
13 Straitshot, Zabit, in California, e-mailed Worthen, in Wyoming, and Prudell and Radford to advise
14 that Telekenex was establishing connections to Mammoth's networks emulating Straitshot's
15 connections to Mammoth's networks to effectuate the schemes to move Straitshot's customer
16 circuits off Straitshot's network and onto Telekenex's network and saying: "LETS GET THIS
17 DONE!!!!!!," referring to the Defendants' schemes to move Straitshot customers to Telekenex's
18 network without Straitshot's consent. That day, Worthen, in Wyoming, e-mailed Zabit, in
19 California, and Prudell and Radford to advise of the prices for making the connection between
20 Mammoth's and Telekenex's networks.

21 80. Summers' Employment by Straitshot. Summers signed an employment contract
22 with Straitshot effective October 2, 2006. Initially, Summers served as a Senior Network
23 Engineer. Beginning in early 2008, he was promoted to Director of Engineering and was
24 responsible for managing Straitshot's technical infrastructure, internal systems, customer
25 networks, and technical requirements. He had access to all of the Internet Protocol addresses and
26 passwords required to access the hardware and software systems on Straitshot's network,

1 including access instructions for Straitshot's internal servers. He was part of the Straitshot senior
2 management team and was privy to all key strategic decisions and had full access to all
3 confidential financial information regarding Straitshot.

4 81. January 21, 2009. On January 21, 2009, while Mammoth was under contract with
5 Straitshot, Worthen, in Wyoming, called Summers, in Washington, to discuss the "Straitshot
6 situation" and the schemes to move Straitshot's customer circuits to Telekenex's network without
7 Straitshot's consent.

8 82. January 22, 2009. On January 22, 2009, Zabit, in California, e-mailed Worthen, in
9 Wyoming, while Mammoth was under contract with Straitshot, requesting that Worthen quote
10 prices for Mammoth to provide Telekenex circuits for the Straitshot customers. Zabit attached a
11 Straitshot spreadsheet with confidential information about Straitshot's customer networks that he
12 obtained from Prudell and Radford. That day, Worthen, in Wyoming, e-mailed Zabit, in
13 California, with the Mammoth pricing for Telekenex to take over all of the Straitshot customer
14 circuits being supplied to Straitshot by Mammoth.

15 83. January 22, 2009. On January 22, 2009, using confidential Straitshot customer
16 information, Zabit, in California, called Straitshot customer Puget Sound Gastroenterology
17 ("PSG"), in Washington, and falsely informed PSG that Straitshot was going out of business and
18 solicited PSG to abandon its contract with Straitshot and sign on with Telekenex at the same
19 prices Straitshot was charging PSG. Based on Mammoth's agreement to seamlessly switch the
20 Straitshot customers from Straitshot's network to Telekenex's network, the Defendants were able
21 to promise PSG a seamless transition from Straitshot to Telekenex. Without Mammoth's
22 participation in the scheme and access to Straitshot's proprietary customer information, Telekenex
23 would have had to undertake the laborious and time-consuming task of rebuilding the PSG circuits
24 from the ground up, vastly increasing the costs and business risks for PSG.

1 84. January 22, 2009. On January 22, 2009, while Mammoth was under contract with
2 Straitshot, Worthen, in Wyoming, e-mailed Zabit and Chaney, in California, and Prudell and
3 Radford:

4 I will have agreements and information to you by mid-afternoon
5 tomorrow. This will include all circuits I'm billing the other
6 provider [Straitshot] and the rate I would invoice Telekenex at. This
7 will include recommended replacements for legacy frame circuits
 [currently being used by Straitshot]. By the time I conduct the
 circuit review, the markup difference will be a wash with the cost-
 savings I suggest. Don't fret....

8 The following day, Zabit, in California, e-mailed in response to Worthen, in Wyoming, and
9 Prudell and Radford, in Washington, requesting that Mammoth "also include [Straitshot] install
10 date and term/remaining term as we are negotiating this item with customers." While Mammoth
11 was under contract with Straitshot and bound by the confidentiality provisions in its agreement
12 with Straitshot, Worthen agreed to Zabit's request and provided the confidential contract terms
13 and prices Mammoth was charging Straitshot.

14 85. January 23, 2009. In response to the January 20, 2009 letters to Telekenex and
15 Prudell from Straitshot's counsel, Telekenex requested a copy of the Prudell Employment
16 Contract and Prudell, in Washington, sent an e-mail stating: "All we signed was an agreement to
17 not solicit the SS employs [sic]. We are golden." Copied on Prudell's e-mail were Radford, in
18 Washington, and Chaney, Zabit, Telekenex's Chief Financial Officer Bob Finley, and Telekenex's
19 General Counsel Glenn Stover, in California.

20 86. January 23, 2009. On January 23, 2009, using stolen confidential Straitshot
21 customer information, Radford, in Washington, e-mailed Salazar and Zabit, in California, and
22 Prudell regarding the "top 7 opp[ortunitie]s" to solicit Straitshot customers and explained that
23 Straitshot customer "PSG is the priority today."

24 87. January 23, 2009. On January 23, 2009, using stolen confidential Straitshot
25 customer information, Prudell called PSG and falsely informed PSG that Straitshot was going out
26

1 of business and solicited PSG to abandon its contract with Straitshot and execute a services
2 contract with Telekenex at the same prices Straitshot was charging PSG.

3 88. January 23, 2009. On January 23, 2009, using stolen confidential Straitshot
4 customer information, Radford, in Washington, spoke by telephone with Salazar, in California,
5 regarding the “top 7 opp[ortunitie]s” to solicit Straitshot customers and how Telekenex would
6 structure the contracts for these customers.

7 89. January 23, 2009. On January 23, 2009, using stolen confidential Straitshot
8 customer information, Salazar, Zabit and Chaney, in California, and Prudell, in Washington,
9 called Straitshot customer Evergreen, in Washington, and falsely informed Evergreen that
10 Straitshot was going out of business and solicited Evergreen to abandon its contract with Straitshot
11 and execute a services contract with Telekenex. Based on Mammoth’s agreement to seamlessly
12 switch the Straitshot customers from Straitshot’s network to Telekenex’s network, the Defendants
13 were able to promise Evergreen a seamless transition from Straitshot to Telekenex. Without
14 Mammoth’s participation in the scheme and access to Straitshot’s confidential customer
15 information, Telekenex would have had to undertake the laborious and time-consuming task of
16 rebuilding the Evergreen circuits from the ground up, vastly increasing the costs and business risks
17 for Evergreen.

18 90. January 23, 2009. On January 23, 2009, using stolen confidential Straitshot
19 customer information, Prudell called Straitshot customer U.S. Bearings (“USB”) and falsely
20 informed USB that Straitshot was going out of business and solicited USB to abandon its contract
21 with Straitshot and execute a services contract with Telekenex at the same prices Straitshot was
22 charging USB. Based on Mammoth’s agreement to switch the Straitshot customers from
23 Straitshot’s network to Telekenex’s network, Prudell promised USB that this “should look like a
24 billing change to you.” Without Mammoth’s participation in the scheme, Telekenex would have
25 to undertake the laborious and time-consuming task of rebuilding the USB circuits from the
26 ground up, vastly increasing the costs and business risks for USB.

1 91. January 23, 2009. On January 23, 2009, Radford, in Washington, e-mailed to
2 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
3 spreadsheet containing confidential information about Straitshot's network for Evergreen and
4 asked Salazar to propose a Telekenex contract for the services outlined in the Straitshot
5 spreadsheet.

6 92. January 23, 2009. On January 23, 2009, using stolen confidential Straitshot
7 customer information, Prudell called Straitshot Customer Super Supplements and falsely informed
8 Super Supplements that Straitshot was going out of business and solicited Super Supplements to
9 abandon its contract with Straitshot and execute a services contract with Telekenex at the same
10 prices Straitshot was charging Super Supplements. Based on Mammoth's agreement to
11 seamlessly switch the Straitshot customers from Straitshot's network to Telekenex's network,
12 Prudell was able to promise Super Supplements a seamless transition from Straitshot to
13 Telekenex. Without Mammoth's participation in the scheme and access to Straitshot's
14 confidential customer information, Telekenex would have had to undertake the laborious and
15 time-consuming task of rebuilding the Super Supplements circuits from the ground up, vastly
16 increasing the costs and business risks for Super Supplements.

17 93. January 23-26, 2009. While employed by Straitshot, Summers traveled from
18 Washington to California and back on January 23-26, 2009 to meet with Zabit at Telekenex's
19 offices in San Francisco and to plan for Summers' employment with Telekenex and the
20 solicitation of Straitshot's customers.

21 94. January 24, 2009. On January 24, 2009, using confidential Straitshot customer
22 information and while Mammoth was under contract with Straitshot, Worthen, in Wyoming, e-
23 mailed Prudell, in Washington, with a quote for a circuit for Straitshot customer Super
24 Supplements and asked: "Shall I contract this as Telekenex?"

25 95. January 24, 2009. On January 24, 2009, while Mammoth was under contract with
26 Straitshot, Worthen, in Wyoming, e-mailed Zabit, in California, and Prudell and Radford, in

1 Washington, with a spreadsheet containing confidential information about Straitshot's customer
2 networks, including the prices Mammoth was charging Straitshot for the underlying circuits, and
3 the price Mammoth would charge Telekenex to move the customers from Straitshot's network to
4 Telekenex's network and asked "what Telekenex [was] going to do to sweeten the pot" for
5 Worthen and Mammoth as additional compensation for Worthen's participation in the conspiracy.

6 96. January 25, 2009. On January 25, 2009, while Mammoth was under contract with
7 Straitshot, Worthen, in Wyoming, e-mailed Zabit, in California, and Prudell and Radford, in
8 Washington, the contracts for Telekenex to execute which would authorize the interconnection
9 between Telekenex's network and Mammoth's network that would allow Mammoth to move
10 Straitshot's customers to Telekenex's network and avoid the laborious and time-consuming need
11 for Telekenex to build the circuits from the ground up.

12 97. January 25, 2009. On January 25, 2009, Radford, in Washington, e-mailed to
13 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
14 spreadsheet containing confidential information about Straitshot's network for USB and asked
15 Salazar to prepare a Telekenex contract for the services outlined in the Straitshot spreadsheet.

16 98. January 25, 2009. On January 25, 2009, Radford, in Washington, e-mailed to
17 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
18 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
19 Norco and asked Salazar to prepare a Telekenex contract for the services outlined in the Straitshot
20 spreadsheet.

21 99. January 25, 2009. On January 25, 2009, Radford, in Washington, e-mailed to
22 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
23 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
24 Daniel Parmele Law and asked Salazar to prepare a Telekenex contract for the services outlined in
25 the Straitshot spreadsheet.

1 100. January 25, 2009. On January 25, 2009, Radford, in Washington, e-mailed to
2 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
3 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
4 Electrical Wholesale Supply ("EWS") and asked Salazar to prepare a Telekenex contract for the
5 services outlined in the Straitshot spreadsheet.

6 101. January 25, 2009. On January 25, 2009, Radford, in Washington, e-mailed to
7 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
8 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
9 The Ram and asked Salazar to prepare a Telekenex contract for the services outlined in the
10 Straitshot spreadsheet.

11 102. January 25, 2009. On January 25, 2009, Radford, in Washington, e-mailed to
12 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
13 spreadsheet containing confidential customer information about Straitshot's proposed network for
14 customer Buffalo Exchange and asked Salazar to prepare a Telekenex contract for the services
15 outlined in the Straitshot spreadsheet.

16 103. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot
17 customer information, Chaney, in California, spoke by telephone with Straitshot customer PSG, in
18 Washington, and falsely informed PSG that Straitshot was going out of business and solicited PSG
19 to abandon its contract with Straitshot and execute a services contract with Telekenex at the same
20 prices Straitshot was charging PSG.

21 104. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot
22 customer information, Prudell spoke by telephone with Straitshot customer The Ram and falsely
23 informed The Ram that Straitshot was going out of business and solicited The Ram to abandon its
24 contract with Straitshot and execute a services contract with Telekenex at the same prices
25 Straitshot was charging The Ram.
26

1 105. Prudell Threatens Straitshot Investor. On January 26, 2009, Prudell, in
2 Washington, called Stephen Perry, CEO of the manager of Straitshot's primary investor, in New
3 York. Perry told Prudell that using confidential Straitshot information Prudell had acquired while
4 an employee of Straitshot to solicit Straitshot customers on behalf of Telekenex was unlawful.
5 Prudell informed Perry that Prudell was not acting as a "lone wolf" and that Telekenex's executive
6 team was fully aware of what he was doing and would protect him. Prudell threatened that he
7 would report a purported Straitshot "tax problem" to the IRS if Straitshot sued him. Perry
8 instructed Prudell to report any such tax problem to the IRS immediately. Several days later,
9 Perry reported the substance of Prudell's comments to Zabit.

10 106. January 26, 2009. On January 26, 2009, Telekenex offered employment to
11 Summers beginning February 10, 2009. On January 28, 2009, Summers accepted the Telekenex
12 job offer, but did not inform Straitshot thereof.

13 107. Summers Takes Straitshot's Laptop and Confidential Information. Summers took
14 from Straitshot a laptop belonging to Straitshot along with confidential Straitshot customer
15 documents and data that showed how each Straitshot customer's network was built, what kind of
16 circuits each Straitshot customer had, what the IP addresses were of the Straitshot customer
17 circuits, when Straitshot had installed its customer circuits, who the underlying carriers were for
18 the Straitshot customer circuits, and the amount of Straitshot monthly revenue derived from each
19 of the Straitshot customers and other valuable confidential information belonging to Straitshot.
20 Summers uploaded the confidential Straitshot customer documents from Straitshot's laptop on to
21 Telekenex's network for use by Telekenex staff in soliciting and moving Straitshot customers
22 from Straitshot's network to Telekenex's network. Summers used the stolen Straitshot documents
23 on the Straitshot laptop to build spreadsheets to plan the movement of Straitshot's customers to
24 Telekenex's network. In an attempt to cover-up his theft of Straitshot's confidential customer
25 information, and despite the Second Temporary Restraining Order entered by the King County
26 Superior Court on February 13, 2009 (the "Second TRO") specifically prohibiting the altering of

1 any documents on the Straitshot laptop, Summers attempted, ineffectively, to delete all of the
2 documents from the Straitshot laptop. When Summers finally complied with the Court's order to
3 return the laptop to Straitshot two months after leaving Straitshot, a forensic examination of the
4 computer uncovered the attempted destruction of evidence and recovered the documents.

5 108. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot
6 customer information, Prudell e-mailed to Straitshot customer PSG Telekenex contracts for the
7 services being provided to PSG under contract with Straitshot.

8 109. January 26, 2009. On January 26, 2009, Radford, in Washington, e-mailed to
9 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
10 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
11 Super Supplements and asked Salazar to prepare a Telekenex contract for the services outlined in
12 the Straitshot spreadsheet.

13 110. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot
14 customer information, Prudell, in Washington, spoke by telephone with Straitshot customer
15 Evergreen's agent Renee Bowman ("Bowman"), in Oregon, and falsely informed Bowman that
16 Straitshot was going out of business and solicited Evergreen to abandon its contract with Straitshot
17 and execute a services contract with Telekenex at the same prices Straitshot was charging
18 Evergreen.

19 111. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot
20 customer information, Prudell, in Washington, e-mailed Zabit, in California, Worthen, in
21 Wyoming, and Straitshot customer PSG, in Washington, requesting that Mammoth, while
22 Mammoth was under contract with Straitshot, complete a circuit order for PSG previously placed
23 by PSG with Straitshot.

24 112. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot
25 customer information, Prudell e-mailed Straitshot customer Boys and Girls Club and asked that
26 Boys and Girls Club call Prudell.

1 113. January 26, 2009. On January 26, 2009, Radford, in Washington, e-mailed to
2 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
3 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
4 A-Dec and asked Salazar to prepare a Telekenex contract for the services outlined in the Straitshot
5 spreadsheet.

6 114. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot
7 customer information, Prudell and Radford, in Washington, called USB's agent Carol Sorenson
8 ("Sorenson"), in Oregon, and falsely informed Sorenson that Straitshot was going out business and
9 solicited USB to abandon its contract with Straitshot and execute a services contract with
10 Telekenex at the same prices Straitshot was charging USB.

11 115. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot
12 customer information, Prudell and Radford, in Washington, and Zabit and Bani, in California,
13 called Straitshot customer The Ram, in Washington, and falsely informed The Ram that Straitshot
14 was going out of business and solicited The Ram to abandon its contract with Straitshot and
15 execute a services contract with Telekenex at the same prices Straitshot was charging The Ram.

16 116. January 26, 2009. On January 26, 2009, Radford, in Washington, e-mailed to
17 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
18 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
19 Steen Outdoor Advertising ("Steen") and asked Salazar to prepare a Telekenex contract for the
20 services outlined in the Straitshot spreadsheet.

21 117. January 26, 2009. On January 26, 2009, Radford, in Washington, e-mailed to
22 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
23 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
24 Velocity Express and asked Salazar to prepare a Telekenex contract for the services outlined in the
25 Straitshot spreadsheet.

1 118. January 26, 2009. On January 26, 2009, Radford, in Washington, e-mailed to
 2 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
 3 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
 4 Pacific Housing Advisors and asked Salazar to prepare a Telekenex contract for the services
 5 outlined in the Straitshot spreadsheet.

6 119. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot
 7 customer information, Salazar, in California, e-mailed to Radford and Prudell, in Washington, the
 8 Telekenex contract for use in soliciting Straitshot customer Super Supplements.

9 120. January 26, 2009. On January 26, 2009, using stolen confidential Straitshot
 10 customer information, Radford e-mailed to Straitshot customer Super Supplements the proposed
 11 Telekenex contract and requested that Super Supplements participate in a telephone call with
 12 Telekenex to discuss the proposed contract.

13 121. January 26, 2009. On January 26, 2009, Radford, in Washington, e-mailed Zabit,
 14 Chaney, Salazar, Bani and Ciniero, in California, and Prudell, in Washington to celebrate the first
 15 successes in Defendants' conspiracy, announcing Telekenex's successful efforts to induce
 16 Straitshot's customers to abandon Straitshot for Telekenex:

17 We just got out Evergreen, US Bearing, and Super Supplements.
 18 Joel [Ciniero] also finished up the RAM waiting for Karen
 19 [Salazar]'s review. Next in order of priority should be Boys and
 20 Girls Club, Norco, Pacific Housing Advisors, and Velocity Express.
 I believe that leaves A-Dec, Steen, Electrical Wholesale, and DPL,
 in the que [sic].

21 122. January 27, 2009. On January 27, 2009, using stolen confidential Straitshot
 22 customer information, Radford e-mailed to Straitshot customer The Ram the proposed Telekenex
 23 contract and requested that The Ram participate in a telephone call with Telekenex to discuss the
 24 proposed contract.

25 123. January 27, 2009. On January 27, 2009, Radford, in Washington, e-mailed to
 26 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot

1 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
2 Tenet Federal Credit Union and asked Salazar to prepare a Telekenex contract for the services
3 outlined in the Straitshot spreadsheet.

4 124. January 27, 2009. On January 27, 2009, Radford, in Washington, e-mailed to
5 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
6 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
7 Ace Hardware and asked Salazar to prepare a Telekenex contract for the services outlined in the
8 Straitshot spreadsheet.

9 125. January 27, 2009. On January 27, 2009, Radford, in Washington, e-mailed to
10 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
11 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
12 Alpine Mortgage and asked Salazar to prepare a Telekenex contract for the services outlined in the
13 Straitshot spreadsheet.

14 126. January 27, 2009. On January 27, 2009, Radford, in Washington, e-mailed to
15 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
16 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
17 Boys and Girls Club and asked Salazar to prepare a Telekenex contract for the services outlined in
18 the Straitshot spreadsheet.

19 127. January 27, 2009. On January 27, 2009, Radford, in Washington, e-mailed to
20 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
21 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
22 Bastian Material Handling and asked Salazar to prepare a Telekenex contract for the services
23 outlined in the Straitshot spreadsheet.

24 128. January 27, 2009. On January 27, 2009, using stolen confidential Straitshot
25 customer information and while Mammoth was under contract with Straitshot, Prudell, in
26 Washington, e-mailed to Zabit and Chaney, in California, Worthen, in Wyoming, and Straitshot

1 customer Norco, in Idaho, to schedule a time for Telekenex to call Norco to solicit Norco to
2 abandon its contract with Straitshot and execute a services contract with Telekenex.

3 129. January 27, 2009. On January 27, 2009, using stolen confidential Straitshot
4 customer information, Salazar, in California, e-mailed to Radford and Prudell, in Washington, and
5 Chaney and Zabit, in California, the Telekenex contract for use in soliciting Straitshot customer
6 EWS and to advise that Telekenex contracts for Straitshot customers "Norco, Pacific Housing,
7 Boys & Girls Club & others are following soon."

8 130. January 27, 2009. On January 27, 2009, Prudell, in Washington, e-mailed Zabit,
9 Chaney and Bani, in California, and Radford, in Washington, to suggest that Prudell and Radford
10 supply stolen confidential information about Straitshot's customers to other salespeople at
11 Telekenex so those salespeople could solicit Straitshot customers to abandon their contracts with
12 Straitshot and execute service contracts with Telekenex.

13 131. January 27, 2009. On January 27, 2009, using stolen confidential Straitshot
14 customer information, Radford, in Washington, e-mailed Straitshot customer Norco, in Idaho,
15 Zabit and Chaney, in California, Prudell, in Washington, and Zabit, in Wyoming, the proposed
16 Telekenex contract and requested that Norco participate in a telephone call with Telekenex to
17 discuss the proposed contract. While Mammoth was under contract with Straitshot, Worthen, in
18 Wyoming, e-mailed in response to Prudell, in Washington: "Bang this one out!"

19 132. January 27, 2009. On January 27, 2009, using stolen confidential Straitshot
20 customer information, Radford e-mailed to Straitshot customer Boys and Girls Club the proposed
21 Telekenex contract and requested that Boys and Girls Club participate in a telephone call with
22 Telekenex to discuss the proposed contract.

23 133. Straitshot Puts Telekenex and Prudell on Further Notice of Straitshot's Rights. On
24 January 28, 2009, Straitshot's counsel wrote to Zabit a letter that was copied on Prudell, Radford,
25 Chaney, Stover and Finley, as follows:

26 It has since come to our attention that Telekenex also has hired
former Straitshot Communications employee Mark Radford.

Please be advised that completely independent from the non-solicitation issue we raised previously, Mesrrs. Prudell and Radford are prohibited from disclosing to, or using on behalf of, Telekenex information about Straitshot Communications' customers including their names, contact information, information about the services they purchased from Straitshot Communications, and the dates upon which the customer contracts with Straitshot are set to expire. This information is a protected trade secret under the Uniform Trade Secrets Act, Chapter 19.108 RCW and under their employment contracts.

The January 28 letter specifically quoted the Non-Competition and Confidentiality Obligation provision of the Prudell and Radford Employment Contracts. Furthermore, the letter stated:

Information about Straitshot Communications' customers is a trade secret which Mesrrs. Prudell and Radford are bound to keep confidential.

The Washington Supreme Court reaffirmed this principle in *Ed Nowogroski Insurance, Inc. v. Rucker*, 137 Wn.2d 427 (1999). The Court explained:

Absent a contract to the contrary, an employee is free to compete against his or her former employer, and a former employee may use general knowledge, skills and experience acquired during the prior employment in competing with a former employer. However, an employee may not use or disclose trade secrets belonging to the former employer to actively solicit customers from a confidential customer list.

Id. at 450. The fact that the former employee recalls the customer information from memory is of no import. *Id.*

Consequently, Mesrrs. Prudell and Radford are prohibited from disclosing confidential information about Straitshot Communications' customers including, without limitation, their identity, the nature of their agreements with Straitshot Communications, and the termination date of their contracts with Straitshot. Use of Straitshot Communications' trade secrets in violation of their contracts and statutory law will result in personal liability for each of these former employees. Additionally, as the Supreme Court recognized in *Nowogroski*, a subsequent employer who permits former employees of a competitor to use such confidential information on behalf of the new employer will be held liable for interference with contractual obligations and resulting damages to the former employer.

We were alarmed to read the January 23 e-mail from Mr. Prudell (“All we signed was an agreement to not solicit the SS employs [sic]. We are golden.”) suggesting he intends to use (or has already used) Straitshot Communications’ trade secrets in his work for Telekenex. In fact, we have spoken with a number of current customers who report that Mr. Prudell is not only utilizing his knowledge of Straitshot Communications’ trade secrets but that he is also misrepresenting himself as somehow “working with” Straitshot Communications in “transitioning customers” to Telekenex. The resulting impact on Straitshot’s business and consequential damages is enormous. Mr. Prudell’s e-mail indicates that you and various persons at Telekenex are aware of Mr. Prudell’s activities. The exposure that you and various individuals at Telekenex, as well as the company itself, face is clear. We further understand that your group is currently soliciting employees of Straitshot. This conduct further demonstrates the ill-advised activities of individuals at your company, the company itself, as well as Mr. Prudell. Given what we have learned, we are investigating Telekenex’ conduct in this matter.

We expect that Telekenex will abide by Washington law and will refrain from competing with Straitshot Communications in any manner that makes use of Straitshot Communications’ confidential customer information obtained from any of Straitshot Communications’ former employees or misrepresents the nature of the employees’ current employment. Please confirm immediately that this is the case.

Equivalent letters were sent directly to Prudell and Radford on January 28, 2009 and copied on the above-mentioned Telekenex executives.

134. January 28, 2009. On January 28, 2009, using stolen confidential Straitshot customer information, Prudell spoke by telephone with Straitshot customer The Ram to solicit The Ram to abandon its contract with Straitshot and execute a services contract with Telekenex at the same prices Straitshot was charging The Ram.

135. January 28, 2009. On January 28, 2009, using stolen confidential Straitshot customer information, Prudell and Radford, in Washington, and Zabit, Chaney, and Bani, in California, spoke by telephone with Straitshot customer Norco, in Idaho, to solicit Norco to abandon its contract with Straitshot and execute a services contract with Telekenex at the same prices Straitshot was charging Norco.

1 136. January 28, 2009. On January 28, 2009, using stolen confidential Straitshot
2 customer information and while he was a Straitshot employee, Summers e-mailed Straitshot
3 customer The Ram to explain, from a technical perspective, the difference between Straitshot's
4 network for The Ram and the proposed Telekenex network for The Ram and how Telekenex
5 intended to accomplish the move of The Ram's network off Straitshot's circuits.

6 137. January 28, 2009. On January 28, 2009, Radford, in Washington, e-mailed to
7 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
8 spreadsheet containing stolen confidential information about Straitshot's network for Straitshot
9 customer Black Angus and asked Salazar to prepare a Telekenex contract for the services outlined
10 in the Straitshot spreadsheet.

11 138. Telekenex Hires Straitshot's Engineers. Telekenex knew of the Straitshot
12 Employment Contracts which prohibited Prudell and Radford from soliciting Straitshot
13 employees. Nonetheless, fully aware that Prudell and Radford were soliciting Straitshot's
14 engineers, Telekenex immediately hired the four remaining Straitshot engineers.

15 139. The Loss of its Engineers Was Devastating to Straitshot. The loss of its entire
16 engineering department, at once, immediately following the departure of Prudell and Radford, was
17 devastating for Straitshot.

18 140. Summers Refused to Provide Straitshot With its Mission Critical Data. The loss
19 caused Straitshot by the overnight departure to Telekenex of its entire engineering department was
20 compounded by Summers' refusal, while he remained a Straitshot employee, to provide to
21 Straitshot's management Straitshot's mission critical data. While Summers was a Straitshot
22 employee, Straitshot's CEO instructed Summers to document for Straitshot all of Straitshot's IP
23 addresses and passwords required to access the hardware and software systems in Straitshot's
24 network, and instructions for accessing Straitshot's internal servers and CRM database. Despite
25 repeated requests that Summers provide this critical information to Straitshot so that it could
26 continue to operate its business and support its customers, Summers stubbornly refused to provide

1 to Straitshot the information about its own systems. In stark contrast, Summers willingly supplied
2 this same highly confidential and valuable Straitshot information to Telekenex in order to facilitate
3 Defendants' schemes.

4 141. January 29, 2009. On January 29, 2009, using stolen confidential Straitshot
5 customer information, Radford and Prudell, in Washington, and Bani, in California, spoke by
6 telephone with Straitshot customer Steen, in Pennsylvania, to solicit Steen to abandon its contract
7 with Straitshot and execute a services contract with Telekenex at the same prices Straitshot was
8 charging Steen.

9 142. January 29, 2009. On January 29, 2009, Radford, in Washington, e-mailed to
10 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
11 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
12 Cascade Coffee and asked Salazar to prepare a Telekenex contract for the services outlined in the
13 Straitshot spreadsheet.

14 143. January 29, 2009. On January 29, 2009, using stolen confidential Straitshot
15 customer information, Salazar, in California, e-mailed to Radford and Prudell, in Washington, and
16 Chaney and Zabit, in California, the Telekenex contract for use in soliciting Straitshot customer
17 Ace Hardware.

18 144. January 29, 2009. On January 29, 2009, using stolen confidential Straitshot
19 customer information, Radford and Prudell, in Washington, and Chaney, Zabit and Bani, in
20 California, spoke by telephone with Straitshot customer Evergreen, in Washington, about how
21 Telekenex proposed to move Straitshot's Evergreen network to Telekenex's network.

22 145. January 29, 2009. On January 29, 2009, Radford, in Washington, e-mailed to
23 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
24 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
25 Carpenters' Trust and asked Salazar to prepare a Telekenex contract for the services outlined in
26 the Straitshot spreadsheet.

1 146. January 29, 2009. On January 29, 2009, Radford, in Washington, e-mailed to
2 Chaney, Zabit and Bani, in California, and Prudell, in Washington a script to be used by
3 Telekenex employees to solicit the Straitshot customers that had been identified as being “fourth
4 tier” by Telekenex. The script falsely stated that Straitshot was going out of business and that
5 Straitshot’s services were being interrupted by the underlying circuit carriers and solicited the
6 Straitshot customers to abandon their contracts with Straitshot and sign on with Telekenex at the
7 same prices Straitshot was charging the customers. Bani circulated the script to Telekenex
8 salespeople Aaron Kanahale, Tim Healy, Lorenzo Henderson, Leonard Williams, Dominick
9 Nivoli, Benjamin Jones, Jon Rief, and Oscar Molnar, each of whom used the script along with
10 stolen confidential information about Straitshot’s customers provided by Prudell and Radford to
11 solicit Straitshot’s customers to abandon their contracts with Straitshot and sign on with
12 Telekenex. On January 30, 2009, Prudell, in Washington, e-mailed each of these Telekenex
13 salespeople, in California, to wish them “happy hunting.”

14 147. January 29, 2009. On January 29, 2009, using stolen confidential Straitshot
15 customer information, Chaney, in California, e-mailed Straitshot customer Evergreen, in
16 Washington, to explain the terms of the proposed Telekenex contract.

17 148. Straitshot Forwards Employment Contracts to Telekenex. On January 30, 2009,
18 per the request of Telekenex, Straitshot forwarded to Telekenex copies of the signed Prudell and
19 Radford Employment Contracts.

20 149. January 30, 2009. On January 30, 2009, while Mammoth was under contract with
21 Straitshot, Zabit, in California, e-mailed Worthen, in Wyoming: “We have now hired all of the
22 straitshot engineers. Are you able to get together on a call?”

23 150. January 30, 2009. On January 30, 2009, Prudell e-mailed Straitshot customer
24 Evergreen, Summers, who continued to be a Straitshot employee, and the former Straitshot
25 engineers and informed Evergreen that Telekenex had “set up a toll free number that will get you
26 to your previous engineers” from Straitshot.

1 151. January 30, 2009. On January 30, 2009, a representative of Straitshot customer
 2 Alpha Packaging, in New York, e-mailed Straitshot as follows: “Are you guys in trouble as we
 3 have some other company calling us saying the circuits are being turned off because Straitshot is
 4 out of business.” Alpha Packaging confirmed that the company that had made the false
 5 representations about Straitshot was Telekenex.

6 152. January 30, 2009. On January 30, 2009, Straitshot customer Stellar Recovery, Inc.
 7 reported to Straitshot that:

8 I’ve just been contacted by Lenny Williams from Telekenex He
 9 indicated that Straitshot is in some extreme financial trouble right
 10 now and Straitshot customers are in jeopardy of their circuits with
 11 underlying carriers being disconnected due to non payment. I’m
 trying to validate these claims and make appropriate decisions to
 prevent our remote offices from disruption in service.

12 In a follow-up e-mail, a Stellar Recovery, Inc. representative wrote: “I ... have a GREAT concern
 13 over unethical practices of your x-employees. I don’t know who to believe. Put yourself in my
 14 position.”

15 153. January 30, 2009. On January 30, 2009, using confidential Straitshot customer
 16 information supplied by Prudell and Radford and the script drafted by Radford, Telekenex
 17 salesman Oscar Molnar, in California, called Straitshot customer Sound Oral & Maxillofacial
 18 (“Sound Oral”), in Washington, and falsely stated that Straitshot was going out of business and
 19 solicited Sound Oral to abandon its contract with Straitshot and execute a services contract with
 20 Telekenex at the same prices Straitshot was charging Sound Oral.

21 154. January 30, 2009. On January 30, 2009, using stolen confidential Straitshot
 22 customer information supplied by Prudell and Radford and the script drafted by Radford,
 23 Telekenex salesman Aaron Kanahale called Straitshot customer Kruger Bensen Ziemer Architects,
 24 Inc. (“KBZ”) and falsely stated that Straitshot was going out of business and solicited KBZ to
 25 abandon its contract with Straitshot and execute a services contract with Telekenex at the same
 26 prices Straitshot was charging KBZ.

1 155. January 30, 2009. On January 30, 2009, using stolen confidential Straitshot
2 customer information supplied by Prudell and Radford and the script drafted by Radford,
3 Telekenex salesman Leonard Williams called Straitshot customer Trumark Companies and falsely
4 stated that Straitshot was going out of business and solicited Trumark Companies to abandon its
5 contract with Straitshot and execute a services contract with Telekenex at the same prices
6 Straitshot was charging Trumark Companies.

7 156. January 30, 2009. On January 30, 2009, using stolen confidential Straitshot
8 customer information supplied by Prudell and Radford and the script drafted by Radford,
9 Telekenex salesman Oscar Molnar, in California, called Straitshot customer Pacific Bag, in
10 Washington, and falsely stated that Straitshot was going out of business and solicited Pacific Bag
11 to abandon its contract with Straitshot and execute a services contract with Telekenex at the same
12 prices Straitshot was charging Pacific Bag.

13 157. January 30, 2009. On January 30, 2009, using stolen confidential Straitshot
14 customer information supplied by Prudell and Radford and the script drafted by Radford,
15 Telekenex salesman Leonard Williams, in California, called Straitshot customer San Juan
16 Navigation, in Washington, and falsely stated that Straitshot was going out of business and
17 solicited San Juan Navigation to abandon its contract with Straitshot and execute a services
18 contract with Telekenex at the same prices Straitshot was charging San Juan Navigation.

19 158. January 30, 2009. On January 30, 2009, using stolen confidential Straitshot
20 customer information supplied by Prudell and Radford and the script drafted by Radford,
21 Telekenex salesman Jon Rief called Straitshot customer Chaser Aerodynamics, LLC (“Chaser”)
22 and falsely stated that Straitshot was going out of business and solicited Chaser to abandon its
23 contract with Straitshot and execute a services contract with Telekenex at the same prices
24 Straitshot was charging Chaser.

25 159. January 30, 2009. On January 30, 2009, using stolen confidential Straitshot
26 customer information supplied by Prudell and Radford and the script drafted by Radford,

1 Telekenex salesman Tim Healy, in California, called Straitshot customer Alpha Packaging, in
2 New York, and falsely stated that Straitshot was going out of business and solicited Alpha
3 Packaging to abandon its contract with Straitshot and execute a services contract with Telekenex
4 at the same prices Straitshot was charging Alpha Packaging.

5 160. January 30, 2009. On January 30, 2009, using stolen confidential Straitshot
6 customer information, Radford, in Washington, spoke by telephone with CMS Enterprises, in
7 Oregon, and USB, in Washington, and falsely stated that Straitshot was going out of business and
8 solicited USB to abandon its contract with Straitshot and execute a services contract with
9 Telekenex at the same prices Straitshot was charging USB.

10 161. January 30, 2009. On January 30, 2009, while he was a Straitshot employee,
11 Summers, in Washington, e-mailed to the Telekenex engineers, in California, that he would be the
12 engineer on duty for Telekenex managing the “transition” of Straitshot customers to Telekenex.

13 162. January 31, 2009. On January 31, 2009, while he was a Straitshot employee,
14 Summers, in Washington, e-mailed to Zabit and Telekenex employee Charles Hampton, in
15 California, that Summers was creating spreadsheets showing how Telekenex would technically
16 accomplish the movement of the Straitshot customers from the Straitshot network to Telekenex’s
17 network. Summers used stolen Straitshot spreadsheets containing confidential information about
18 Straitshot customer networks to create the spreadsheets that Telekenex used to plan for, and
19 accomplish, the movement of Straitshot customers from Straitshot’s network to Telekenex’s
20 network.

21 163. Straitshot Contracts with Voxitas to Refer Straitshot Customers. As a result of the
22 actions taken by Mammoth and Telekenex, Straitshot’s goodwill among its customers was
23 severely damaged. To mitigate damages to its customers and to itself, Straitshot contracted with
24 another managed network services provider, Voxitas, to refer Straitshot’s customers to Voxitas.
25 In exchange for each successful referral, Voxitas would pay Straitshot a residual commission on
26

1 ongoing revenues received from the referred customers. Mr. Gold advised Worthen of this
2 agreement.

3 FEBRUARY 2009

4 164. Mammoth Refuses to Abide by the Deferral Agreement. Contrary to the Deferral
5 Agreement, on February 2, 2009, Worthen e-mailed Mr. Gold and demanded that Straitshot pre-
6 pay by February 13, 2009 \$30,000 of the as-yet-unissued February 27, 2009 Mammoth invoice.
7 Mammoth advised Telekenex of this demand.

8 165. February 2, 2009. On or about February 2, 2009, using stolen confidential
9 Straitshot customer information, Prudell, in Washington, called Straitshot customer Ace
10 Hardware, in Hawaii, and falsely stated that Straitshot was going out of business, and solicited
11 Ace Hardware to abandon its contract with Straitshot and execute a services contract with
12 Telekenex at the same prices Straitshot was charging Ace Hardware. That day, Prudell e-mailed
13 the proposed Telekenex contract and requested that Ace Hardware execute it.

14 166. February 2, 2009. On February 2, 2009, while he was a Straitshot employee and
15 using stolen confidential Straitshot customer information, Summers communicated with Straitshot
16 customer PSG to manage the technical transition of PSG's Straitshot network to Telekenex's
17 network. He sought to avoid involving Prudell in that process to allow Prudell to focus on his
18 latest role in Defendants' schemes – specifically, to “dial for dollars” by soliciting other Straitshot
19 customers to abandon their contracts with Straitshot and execute service contracts with Telekenex.
20 Using Straitshot's confidential password and log on protocols, but without authorization from or
21 notice to Straitshot, Summers logged in to Straitshot's routers and made changes to Straitshot's
22 network for PSG.

23 167. February 2, 2009. On February 2, 2009, using stolen confidential Straitshot
24 customer information, Bani, in California, and Prudell and Radford, in Washington, spoke by
25 telephone with Straitshot customer Evergreen, in Washington, regarding moving Evergreen off
26 Straitshot's network and on to Telekenex's network.

1 168. February 2, 2009. On February 2, 2009, using stolen confidential Straitshot
2 customer information, Radford and Prudell, in Washington, called Straitshot customer DuCharme
3 McMillen, in Indiana, and left a voicemail message on behalf of Telekenex. That day, using
4 stolen confidential Straitshot customer information, Radford, in Washington, e-mailed DuCharme
5 McMillen, in Indiana, that Radford “[n]eed[ed] to talk with you about what’s going on over at
6 Straitshot and your network. Please give me a call back as soon as you can to discuss.”

7 169. February 2, 2009. On February 2, 2009, using stolen confidential Straitshot
8 customer information, Radford called Straitshot customer The Neurology Center and falsely stated
9 that Straitshot was going out of business and solicited The Neurology Center to abandon its
10 contract with Straitshot and execute a services contract with Telekenex at the same prices charged
11 by Straitshot. As a result, The Neurology Center cancelled its contract with Straitshot.

12 170. February 3, 2009. On February 3, 2009, using stolen confidential Straitshot
13 customer information, Bani and Ciniero, in California, and Prudell and Radford, in Washington,
14 spoke by telephone with Straitshot customer DuCharme McMillen, in Indiana, and falsely stated
15 that Straitshot was going out of business and solicited DuCharme McMillen to abandon its
16 contract with Straitshot and execute a services contract with Telekenex at the same prices
17 Straitshot was charging DuCharme McMillen.

18 171. February 3, 2009. On February 3, 2009, using stolen confidential Straitshot
19 customer information, Bani, in California, and Radford and Prudell, in Washington, spoke by
20 telephone with Straitshot customer The Ram, in Washington, and falsely stated that Straitshot was
21 going out of business and solicited The Ram to abandon its contract with Straitshot and execute a
22 services contract with Telekenex at the same prices Straitshot was charging The Ram.

23 172. February 3, 2009. On February 3, 2009, Radford, in Washington, e-mailed to
24 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
25 spreadsheet containing confidential information about Straitshot’s network for Straitshot customer
26

1 DuCharme McMillen and asked Salazar to prepare a Telekenex contract for the services outlined
2 in the Straitshot spreadsheet.

3 173. February 3, 2009. On February 3, 2009, using stolen confidential Straitshot
4 customer information, Radford, in Washington, e-mailed to Straitshot customer DuCharme
5 McMillen, in Indiana, the proposed Telekenex contract.

6 174. February 3, 2009. On February 3, 2009, using stolen confidential Straitshot
7 customer information, Bani and Salazar, in California, and Prudell and Radford, in Washington,
8 spoke by telephone with Straitshot customer Norco, in Idaho, and falsely informed Norco that
9 Straitshot was going out of business and solicited Norco to abandon its contract with Straitshot
10 and execute a services contract with Telekenex at the same prices Straitshot was charging Norco.

11 175. February 3, 2009. On February 3, 2009, Straitshot customer KBZ reported to
12 Straitshot as follows:

13 It has been a very unsettling week which began with a call from a
14 representative of Telekenex stating that he was working at the
15 behest of Covad (and other carrier [sic]) to pick up the pieces of a
16 defaulted Straitshot and that our circuits could be shut down at any
17 time as Straitshot was significantly behind in payments to carriers.
.... They knew our current Straitshot rates and offered to put me in
touch with "former Straitshot employees" that had come to
Telekenex in the wake of Straitshot's "impending dissolution" (not
an exact quote).

18 176. February 3, 2009. On February 3, 2009, Straitshot customer Vinculum
19 Communications reported to Straitshot as follows:

20 I did receive a contact from Benjamin Jones
21 [bjones@telekenex.com].... He contacted me stating that they had
22 purchase [sic] all of your circuits and were going to take over
23 services and would still honor the Straitshot price (but we had to
24 sign a 3 year extension deal).... I have started looking around to
25 move the circuits because of the notification that Straitshot is going
26 out of business. Benjamin did offer for me to speak with Mark
Radford (our old sales rep from Straitshot) if I needed verification
that Straitshot was out of business.

1 177. February 3, 2009. On February 3, 2009, Straitshot agent Jae Sin reported to
2 Straitshot as follows: “People from Telekenex are calling our customers stating that you are
3 shutting them off next week Friday and that they can do a[n] internal core routing changes [sic]
4 without changing out the local loop.” Mr. Sin was particularly concerned about the possibility
5 that unauthorized individuals could execute “internal core routing changes,” as such
6 modifications involve a process whereby the destination of customer data travelling over the
7 network can be changed. Such changes would also be required to move a network endpoint to a
8 different carrier network core, as in Defendants’ schemes to move customers from Straitshot’s
9 network to Telekenex’s network. Absent Straitshot’s explicit authorization and direction –
10 Straitshot being the one in control of the highly confidential information regarding the Straitshot
11 network’s endpoints – this type of change could not occur without the cooperation of an
12 unscrupulous carrier and the use by Telekenex of confidential Straitshot customer information
13 provided by Prudell, Radford, Summers, and Worthen to breach the security of Straitshot’s
14 network configuration.

15 178. February 3, 2009. On February 3, 2009, Radford, in Washington, e-mailed to
16 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
17 spreadsheet containing confidential information about Straitshot’s network for Straitshot customer
18 Perry Ford and asked Salazar to prepare a Telekenex contract for the services outlined in the
19 Straitshot spreadsheet.

20 179. February 3, 2009. On or about February 3, 2009, using stolen confidential
21 Straitshot customer information, a Telekenex salesperson called Straitshot customer Miller, Inc.
22 and falsely told Miller Inc. that Straitshot was going out of business and that Miller, Inc.’s network
23 would be disconnected within one week unless Miller, Inc. signed up with Telekenex.

24 180. February 3, 2009. On February 3, 2009, Radford, in Washington, e-mailed to
25 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
26 spreadsheet containing confidential information about Straitshot’s network for Straitshot customer

1 Vision Express and asked Salazar to prepare a Telekenex contract for the services outlined in the
2 Straitshot spreadsheet.

3 181. February 3, 2009. On February 3, 2009, Radford, in Washington, e-mailed to
4 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
5 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
6 MOR Furniture and asked Salazar to prepare a Telekenex contract for the services outlined in the
7 Straitshot spreadsheet.

8 182. February 3, 2009. On February 3, 2009, Radford, in Washington, e-mailed to
9 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
10 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
11 Howard S. Wright and asked Salazar to prepare a Telekenex contract for the services outlined in
12 the Straitshot spreadsheet.

13 183. February 4, 2009. On February 4, 2009, Radford, in Washington, e-mailed to
14 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
15 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
16 Security RM and asked Salazar to prepare a Telekenex contract for the services outlined in the
17 Straitshot spreadsheet.

18 184. February 4, 2009. On February 4, 2009, using stolen confidential Straitshot
19 customer information, Radford e-mailed the agent for Straitshot customer Stellar Recovery/ARS
20 and stated: "As mentioned, we can simply re-point the traffic for customer, ARS, ensuring the
21 least amount of down time possible. We will not need to re-provision loops or need to role a
22 truck. Telekenex will honor all the existing SS [Straitshot] pricing." The reference to "re-
23 point[ing] the traffic" describes a process whereby the destination of network endpoints are shifted
24 to a different carrier network core, as in Defendants' schemes to move customers from
25 Straitshot's network to Telekenex's network. Absent Straitshot's explicit authorization and
26 direction— Straitshot being the one in control of the highly confidential information regarding the

1 Straitshot network's endpoints – this type of change could not occur without the cooperation of an
2 unscrupulous carrier and the use by Telekenex of Straitshot's confidential customer information
3 provided by Prudell, Radford, Summers, and Worthen to breach the security of Straitshot's
4 network configuration.

5 185. February 4, 2009. On February 4, 2009, using stolen confidential Straitshot
6 customer information, Prudell, in Washington, called Straitshot customer DuCharme McMillen, in
7 Indiana, and falsely stated that Straitshot was going out of business and solicited DuCharme
8 McMillen to abandon its contract with Straitshot and sign on with Telekenex at the same prices
9 Straitshot was charging DuCharme McMillen.

10 186. February 5, 2009. On February 5, 2009, using stolen confidential Straitshot
11 customer information, Radford, in Washington, called Straitshot customer Nexus IS, in California,
12 and left a voicemail message falsely stating that Straitshot was going out of business and soliciting
13 Nexus IS to abandon its contract with Straitshot and execute a services contract with Telekenex at
14 the same prices Straitshot was charging Nexus IS.

15 187. February 5, 2009. On February 5, 2009, using stolen confidential Straitshot
16 customer information, Radford and Prudell, in Washington, and Bani, in California, spoke by
17 telephone with Straitshot customer DuCharme McMillen and falsely stated that Straitshot was
18 going out of business and solicited DuCharme McMillen to abandon its contract with Straitshot
19 and sign on with Telekenex at the same prices Straitshot was charging DuCharme McMillen.

20 188. February 5, 2009. On February 5, 2009, Radford, in Washington, e-mailed to
21 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
22 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
23 IPiphany and asked Salazar to prepare a Telekenex contract for the services outlined in the
24 Straitshot spreadsheet.

25 189. February 5, 2009. On February 5, 2009, using stolen confidential Straitshot
26 customer information, Prudell and Radford, in Washington, and Bani, in California, spoke by

1 telephone with Straitshot customer Mega Hertz, in Colorado, and falsely stated that Straitshot was
2 going out of business and solicited Mega Hertz to abandon its contract with Straitshot and sign on
3 with Telekenex at the same prices Straitshot was charging Mega Hertz.

4 190. February 5, 2009. On February 5, 2009, using stolen confidential Straitshot
5 customer information, Radford, in Washington, e-mailed to Straitshot customer DuCharme
6 McMillen, in Indiana, the proposed Telekenex contract.

7 191. February 5, 2009. On February 5, 2009, using stolen confidential Straitshot
8 customer information, Prudell called Straitshot customer Lake Washington Vascular and falsely
9 stated that Straitshot was going out of business and solicited Lake Washington Vascular to
10 abandon its contract with Straitshot and sign on with Telekenex at the same prices Straitshot was
11 charging Lake Washington Vascular.

12 192. February 5, 2009. On February 5, 2009, Radford, in Washington, e-mailed to
13 Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a stolen Straitshot
14 spreadsheet containing confidential information about Straitshot's network for Straitshot customer
15 Lake Washington Vascular and asked Salazar to prepare a Telekenex contract for the services
16 outlined in the Straitshot spreadsheet.

17 193. February 5, 2009. On February 5, 2009, while Summers was a Straitshot
18 employee, Telekenex's Director of IP Infrastructure, Charles Hampton, e-mailed to Zabit,
19 Summers, and other Telekenex engineers that Summers would be accessing Straitshot's routers,
20 requiring use of Straitshot's confidential passwords and log on protocols, to move Straitshot
21 customer Evergreen's network from Straitshot's network to Telekenex's network. While he was a
22 Straitshot employee, Summers completed the unauthorized reconfiguration described by Hampton.

23 194. February 5, 2009. On February 5, 2009, while he was a Straitshot employee,
24 Summers e-mailed to Zabit, in California, and Prudell, in Washington, stolen confidential
25 Straitshot customer information about Straitshot customer Evergreen that Summers obtained from
26 Straitshot's CRM database.

1 195. Entry of TRO. On February 5, 2009, the King County Superior Court entered a
2 TRO against Prudell, Radford and Telekenex prohibiting them from:

3 (1) using in any way Straitshot's trade secrets and confidential
4 information, including without limitation, information about
5 Straitshot's customers and its network; (2) Communicating in any
6 way with anyone known by Defendants to be a Straitshot customer,
7 vendor, partner or agent of a Straitshot customer; and (3) Making
8 any statement about the status of Straitshot's business.

9 196. February 6, 2009. On February 6, 2009, Summers advised Straitshot that he would
10 not be doing any more work for Straitshot and that he was relinquishing that day access to
11 Straitshot's confidential passwords.

12 197. February 2009. In early February 2009, without permission from Straitshot and
13 while he was a Straitshot employee, Summers repeatedly logged on to Straitshot's routers, using
14 Straitshot's confidential password and log on protocols, to obtain information regarding
15 Straitshot's customer circuits for use in moving Straitshot customers to Telekenex's network.
16 Summers supplied to Telekenex engineers Straitshot's confidential password and log on protocols
17 which they used to obtain information regarding Straitshot's customer circuits for use in moving
18 Straitshot customers to Telekenex's network. After February 6, 2009, Summers, on behalf of
19 Telekenex, repeatedly logged on to Straitshot's routers, using Straitshot's confidential password
20 and log on protocols, to make the changes on Straitshot's network necessary for Defendants to
21 accomplish their scheme of moving Straitshot's customers to Telekenex's network without
22 Straitshot's knowledge or consent.

23 198. February 6, 2009. On February 6, 2009, in direct violation of the TRO, Summers,
24 in California, sent an instant message to Worthen, in Wyoming, requesting that Mammoth
25 maintain Straitshot customers on Straitshot's routers while Summers completed the engineering
26 work necessary to move Straitshot customers to Telekenex's network. While Mammoth was
under contract with Straitshot and without notifying Straitshot, Worthen responded that Mammoth
would do so.

1 199. February 6-7, 2009. While Mammoth was under contract with Straitshot and in
2 direct violation of the TRO, Zabit traveled from California to Wyoming and back on February 6-7,
3 2009 to meet with Worthen and the Mammoth Board of Directors at Mammoth's offices in
4 Wyoming. Zabit presented to Worthen and the Mammoth Board a proposal for Mammoth to
5 move all of Straitshot's customers to Telekenex's network without Straitshot's consent in
6 exchange for Telekenex committing to purchase a high volume of circuits from Mammoth.

7 200. February 7, 2009. On February 7, 2009, using stolen confidential Straitshot
8 customer information and in direct violation of the TRO, Telekenex salesman Tim Healy, in
9 California, e-mailed to Straitshot customer Mega Hertz, in Colorado, the proposed Telekenex
10 contract.

11 201. February 9, 2009. On February 9, 2009, using stolen confidential Straitshot
12 customer information and in direct violation of the TRO, Zabit, Bani and Salazar, in California,
13 and Prudell and Radford, in Washington, spoke by telephone regarding soliciting Straitshot's
14 customers to abandon their contracts with Straitshot and sign on with Telekenex at the same prices
15 Straitshot was charging the customers.

16 202. February 9, 2009. On February 9, 2009, in direct violation of the TRO, Radford, in
17 Washington, e-mailed to Salazar, Chaney and Zabit, in California, and Prudell, in Washington, a
18 stolen Straitshot spreadsheet containing confidential information about Straitshot's network for
19 Straitshot customer RGL Forensics and asked Salazar to prepare a Telekenex contract for the
20 services outlined in the Straitshot spreadsheet.

21 203. February 9, 2009. On February 9, 2009, in direct violation of the TRO, Summers,
22 using stolen Straitshot's confidential password and log on protocols, accessed Straitshot's router
23 and disabled the network for Straitshot customer Norco and caused the network to cease
24 functioning.

1 204. February 10, 2009. On multiple occasions on February 10, 2009, Telekenex,
2 without authorization from Straitshot and in direct violation of the TRO, used Straitshot's
3 confidential passwords and protocols, obtained from Summers, to log in to Straitshot's routers.

4 205. February 10, 2009. On February 10, 2009, using confidential Straitshot customer
5 information and in direct violation of the TRO, Radford e-mailed to Straitshot customer Lake
6 Washington Vascular the proposed Telekenex contract and requested that Lake Washington
7 Vascular call Telekenex to discuss the same.

8 206. February 10, 2009. On February 10, 2009, in direct violation of the TRO, Radford,
9 in Washington, e-mailed to Salazar, Chaney and Zabit, in California, and Prudell, in Washington,
10 a stolen Straitshot spreadsheet containing confidential information about Straitshot's network for
11 Straitshot customer Easy Care and asked Salazar to prepare a Telekenex contract for the services
12 outlined in the Straitshot spreadsheet.

13 207. February 10, 2009. On February 10, 2009, using confidential Straitshot customer
14 information and in direct violation of the TRO, Bani, in California, spoke by telephone with
15 Straitshot customer A-Dec, in Oregon, and falsely stated that Straitshot was going out of business
16 and solicited A-Dec to abandon its contract with Straitshot and sign on with Telekenex at the same
17 prices Straitshot was charging A-Dec.

18 208. February 11, 2009. On February 11, 2009, while Mammoth was under contract
19 with Straitshot and in direct violation of the TRO, Zabit, in California, e-mailed to Worthen, in
20 Wyoming, executed service orders authorizing Mammoth to make the connections to Telekenex's
21 network for use in moving the Straitshot customers to Telekenex.

22 209. February 11, 2009. On February 11, 2009, using stolen confidential Straitshot
23 customer information and in direct violation of the TRO, Bani, Salazar, and Ciniero, in California,
24 and Prudell and Radford, in Washington, spoke by telephone with Straitshot customer Steen, in
25 Pennsylvania, and falsely stated that Straitshot was going out of business and discussed moving
26 Steen from Straitshot's network to Telekenex's network.

1 210. February 11, 2009. On February 11, 2009, in direct violation of the TRO, Radford,
2 in Washington, e-mailed to Salazar, Chaney and Zabit, in California, and Prudell, in Washington,
3 a stolen Straitshot spreadsheet containing confidential information about Straitshot's network for
4 Straitshot customer RW Smith and asked Salazar to prepare a Telekenex contract for the services
5 outlined in the Straitshot spreadsheet.

6 211. February 11, 2009. On February 11, 2009, using stolen confidential Straitshot
7 customer information and in direct violation of the TRO, Bani, in California, and Summers,
8 Prudell, and Radford, in Washington, spoke by telephone with Straitshot customer A-Dec, in
9 Oregon, and falsely stated that Straitshot was going out of business and solicited A-Dec to
10 abandon its contract with Straitshot and execute a services contract with Telekenex at the same
11 prices Straitshot was charging A-Dec.

12 212. February 12, 2009. On February 12, 2009, using stolen confidential Straitshot
13 customer information and in direct violation of the TRO, Prudell spoke by telephone with
14 Straitshot customer Boys and Girls Club and falsely stated that Straitshot was going out of
15 business and solicited Boys and Girls Club to abandon its contract with Straitshot and execute a
16 services contract with Telekenex at the same prices Straitshot was charging Boys and Girls Club.
17 In an attempt to keep hidden his violation of the TRO and his continuing role in Defendants'
18 unlawful schemes, Prudell followed the call with an e-mail asking that Boys and Girls Club
19 "Please keep me off [Straitshot CEO] Andrew [Gold]'s Radar and I will give the Boys and Girls
20 Club some great options."

21 213. February 12, 2009. On February 12, 2009, in direct violation of the TRO, Holst, in
22 California, e-mailed to Radford, in Washington, and requested that for all of the contracts
23 Telekenex had executed with Straitshot customers: "I need customer contact information, today if
24 possible, if not, as early tomorrow as possible. Anthony [Zabit] wants my team to contact all the
25 [former Straitshot] customers tomorrow and obtain Inside Wire information, as well as give them
26

1 updates on their cut over into our systems.” In direct violation of the TRO, Radford supplied the
2 requested stolen confidential Straitshot customer information to Holst.

3 214. February 13, 2009. On February 13, 2009, using stolen confidential Straitshot
4 customer information and in direct violation of the TRO, Radford spoke by telephone with
5 Straitshot customer MacKay & Sposito and falsely stated that Straitshot was going out of business
6 and solicited MacKay & Sposito to abandon its contract with Straitshot and execute a services
7 contract with Telekenex at the same prices Straitshot was charging MacKay & Sposito.

8 215. February 13, 2009. On February 13, 2009, using stolen confidential Straitshot
9 customer information and in direct violation of the TRO, Radford, in Washington, spoke by
10 telephone with Straitshot customer Chicago Apartment Finders, in Illinois, and falsely stated that
11 Straitshot was going out of business and solicited Chicago Apartment Finders to abandon its
12 contract with Straitshot and execute a services contract with Telekenex at the same prices
13 Straitshot was charging Chicago Apartment Finders.

14 216. February 17, 2009. On February 17, 2009, using stolen confidential Straitshot
15 customer information and in direct violation of the TRO, Zabit and Bani, in California, and
16 Prudell and Radford, in Washington, spoke by telephone with Straitshot customer DuCharme
17 McMillen, in Indiana, and solicited DuCharme McMillen to abandon its contract with Straitshot
18 and sign on with Telekenex at the same prices Straitshot was charging DuCharme McMillen.

19 217. Mammoth Terminates Services to Straitshot. On February 17, 2009, Mammoth cut
20 off Straitshot’s circuits in an effort to extort a premature cash payment from Straitshot contrary to
21 the Deferral Agreement. This caused the networks of Straitshot’s customers to go down and
22 caused damages and distress to those customers and to Straitshot.

23 218. February 18, 2009. On February 18, 2009, while Mammoth was under contract
24 with Straitshot and in direct violation of the TRO, Prudell, in Washington, sent an instant message
25 to Worthen, in Wyoming, stating: “we would like to send \$ to you & have a deal done.”
26

1 219. February 18, 2009. On February 18, 2009, while Mammoth was under contract
2 with Straitshot, Worthen, in Wyoming, sent an instant message to Summers, in Washington,
3 advising that the cross-connect between Telekenex's network and Mammoth's network was
4 complete.

5 220. Amended TRO. On February 18, 2009, the King County Superior Court amended
6 the TRO to prohibit Prudell, Radford and Telekenex from: "(1) using in any way Straitshot's
7 trade secrets and confidential information, including without limitation, information about
8 Straitshot's customers and its network; (2) Communicating in any way with anyone known by
9 Defendants to be a Straitshot customer, vendor, partner or agent of a Straitshot customer" except
10 that Defendants were permitted to communicate with 15 specified customers with whom Prudell
11 and Radford alleged they had substantial customer relationships prior to their employment with
12 Straitshot; "and (3) Making any disparaging statement about the status of Straitshot's business."

13 221. February 19, 2009. On February 19, 2009, former Straitshot engineer Sunil Modi,
14 now employed by Telekenex, provided to Telekenex in direct violation of the Amended TRO the
15 stolen confidential and proprietary Internet Protocol addresses belonging to Straitshot that had
16 been used by Straitshot to create a network for Straitshot customer The Ram. In direct violation of
17 the Amended TRO, Telekenex and Mammoth used this information to move The Ram from
18 Straitshot's network to Telekenex's network without Straitshot's approval.

19 222. February 19, 2009. On February 19, 2009, while Mammoth was under contract
20 with Straitshot, Worthen, in Wyoming, e-mailed Prudell, in Washington, instructing Telekenex to
21 send over Telekenex contracts signed by the former Straitshot customers. "I can redirect to you
22 any time once I have that. We will then send you agreements for all the [Straitshot] circuits you
23 are assuming control of."

24 223. February 19, 2009. On February 19, 2009, using stolen confidential Straitshot
25 customer information, while Mammoth remained under contract with Straitshot, and in direct
26 violation of the Amended TRO, Chaney, in California, e-mailed to Worthen, in Wyoming,

1 Telekenex contracts signed by the Straitshot customers. "Attached are signed contracts for the
2 following companies: Velocity Express, Evergreen Healthcare, Puget Sound Gas, RAM
3 Restaurants, US Bearings, Miller Inc. We expect to be sending over the following contracts later
4 today or tomorrow morning as well: Presidential Pools, Shred IT, Boys and Girls Club."

5 224. February 19, 2009. On February 19, 2009, while Mammoth remained under
6 contract with Straitshot, Worthen, in Wyoming, e-mailed to Chaney, in California: "Nicely done.
7 I'll await your direction to either (1) leave live to the Straitshot router or (2) repoint to your router.
8 As far as I'm concerned, you are in the driver's seat for the first 6 End Users as of 6:00 pm
9 Mountain 2/19/09." Worthen had no authorization from Straitshot to, and did not inform
10 Straitshot regarding his, offer to put Telekenex in the "driver's seat" of Straitshot's router.

11 225. February 19, 2009. On February 19, 2009, Radford, in Washington, in direct
12 violation of the Amended TRO, e-mailed to Salazar, Chaney, Zabit, Ciniero, and Bani, in
13 California, and Prudell, in Washington, a stolen Straitshot spreadsheet containing confidential
14 information about Straitshot's network for Straitshot customer Organic to Go and asked Salazar to
15 prepare a Telekenex contract for the services outlined in the Straitshot spreadsheet.

16 226. February 20, 2009. Mammoth terminated its contract with Straitshot on February
17 20, 2009.

18 227. February 20, 2009. On February 20, 2009, using stolen confidential Straitshot
19 customer information and in direct violation of the Amended TRO, Radford and Prudell, in
20 Washington, and Zabit and Bani, in California, spoke by telephone with Straitshot customer Steen,
21 in Pennsylvania, and solicited Steen to abandon its contract with Straitshot and sign on with
22 Telekenex at the same prices Straitshot was charging Steen.

23 228. February 20, 2009. On February 20, 2009, using stolen confidential Straitshot
24 customer information and in direct violation of the Amended TRO, Radford and Prudell, in
25 Washington, and Bani, in California, spoke by telephone with Straitshot customer Pacific Housing
26 Advisors and solicited Pacific Housing Advisors to abandon its contract with Straitshot and sign

1 on with Telekenex at the same prices Straitshot was charging Pacific Housing Advisors. Pacific
 2 Housing Advisors was not among the Straitshot customers excepted from the Amended TRO's
 3 prohibition on contact.

4 229. February 20, 2009. On February 20, 2009, using stolen confidential Straitshot
 5 customer information and in direct violation of the Amended TRO, Telekenex salesman Tim
 6 Healy, in California, called Straitshot customer Sound Sleep Health, in Washington, and informed
 7 Sound Sleep Health that Telekenex had gotten the contact information for Sound Sleep Health
 8 from a list of Straitshot customers and he solicited Sound Sleep Health to abandon its contract
 9 with Straitshot and sign on with Telekenex. Sound Sleep Health was not among the Straitshot
 10 customers excepted from the Amended TRO's prohibition on contract.

11 230. February 20, 2009. On February 20, 2009, using stolen confidential Straitshot
 12 customer information and in direct violation of the Amended TRO, Telekenex salesman Oscar
 13 Molnar, in California, called Straitshot customer EWS, in Idaho, and solicited EWS to abandon its
 14 contract with Straitshot and sign on with Telekenex. EWS was not among the Straitshot
 15 customers excepted from the Amended TRO's prohibition on contact.

16 231. February 20, 2009. On February 20, 2009, using stolen confidential Straitshot
 17 customer information in direct violation of the Amended TRO, Telekenex salesman Tim Healy, in
 18 California, e-mailed Straitshot customer Sound Sleep Health, in Washington, and stated:

19 As you are aware, there are serious issues at Straitshot
 20 Communications and many of their customers are in danger of being
 21 turned off, if they haven't already. We have entered into agreements
 22 with Mammoth Networks who provides a number of services to
 23 vendors such as Straitshot to offer the same services with minimal,
 24 or no downtime. All key Straitshot employees, including their
 25 engineers and technicians, are now employed at Telekenex. This
 26 allows us to seamlessly transition current Straightshot [sic]
 customers to the Telekenex network. I am working on getting you
 the proper paperwork to you [sic], so we may get Sound Health [sic]
 migrated over as soon as possible.

Sound Sleep Health was not among the Straitshot customers excepted from the Amended TRO's
 prohibition on contact.

1 232. February 20, 2009. On February 20, 2009, using stolen confidential Straitshot
2 customer information and in direct violation of the Amended TRO, Radford e-mailed Straitshot
3 customer Organics to Go a proposed Telekenex contract to replace Straitshot's services and that
4 "[a]ll services and prices remain the same as today.... As soon as you can get me this back the
5 better so I can get you in the que [sic] with Josh [Summers] and team and a project manager
6 assigned." Organics to Go was not among the Straitshot customers excepted from the Amended
7 TRO's prohibition on contact.

8 233. February 20, 2009. On February 20, 2009, in direct violation of the Amended
9 TRO, Summers, in Washington, e-mailed to Mammoth engineer Jeremy Mali, in Wyoming,
10 Straitshot's stolen confidential information about the mapping of Straitshot's customer routes for
11 Mammoth's use in moving Straitshot's customers to Telekenex's network.

12 234. February 23, 2009. On February 23, 2009, using stolen confidential Straitshot
13 customer information and in direct violation of the Amended TRO, Radford, in Washington, and
14 Bani, in California, spoke by telephone with Straitshot customer Easy Staffing, in Arizona, and
15 solicited Easy Staffing to sign on with Telekenex at the same prices Straitshot was charging Easy
16 Staffing. Easy Staffing was not among the Straitshot customers excepted from the Amended
17 TRO's prohibition on contact.

18 235. February 24, 2009. On February 24, 2009, using stolen confidential Straitshot
19 customer information and in direct violation of the Amended TRO, a Telekenex salesperson called
20 Straitshot customer Volunteers of America and solicited Volunteers of America to sign on with
21 Telekenex at the same prices Straitshot was charging Volunteers of America. Volunteers of
22 America was not among the Straitshot customers excepted from the Amended TRO's prohibition
23 on contact.

24 236. February 27, 2009. On February 27, 2009, using stolen confidential Straitshot
25 customer information and in direct violation of the Amended TRO, Prudell e-mailed Straitshot
26 customer Boys and Girls Club and solicited Boys and Girls Club to sign on with Telekenex. Boys

1 and Girls Club was not among the Straitshot customers excepted from the Amended TRO's
2 prohibition on contact.

3 237. February 27, 2009. On February 27, 2009, using stolen confidential Straitshot
4 customer information and in direct violation of the Amended TRO, Radford, Prudell and
5 Summers, in Washington, and Ciniero, in California, spoke by telephone with Straitshot customer
6 Pacific Housing Advisors, in Washington, regarding moving Pacific Housing Advisors from
7 Straitshot's network to Telekenex's network. Pacific Housing Advisors was not among the
8 Straitshot customers excepted from the Amended TRO's prohibition on contact.

9 MARCH 2009

10 238. March 2, 2009. On March 2, 2009, using stolen confidential Straitshot customer
11 information and in direct violation of the Amended TRO, Radford, in Washington, e-mailed
12 Rogers Machinery, in Oregon, and solicited Rogers Machinery to move from Straitshot's network
13 to Telekenex's network. Rogers Machinery was not among the Straitshot customers excepted
14 from the Amended TRO's prohibition on contact.

15 239. March 2, 2009. On March 2, 2009, using stolen confidential Straitshot customer
16 information and in direct violation of the Amended TRO, Prudell called Organics to Go and
17 solicited Organics to Go to move from Straitshot's network to Telekenex's network. Organics to
18 Go was not among the Straitshot customers excepted from the Amended TRO's prohibition on
19 contact.

20 240. March 2, 2009. On March 2, 2009, using stolen confidential Straitshot customer
21 information and in direct violation of the Amended TRO, Prudell e-mailed Lake Washington
22 Vascular and solicited Lake Washington Vascular to move from Straitshot's network to
23 Telekenex's network. Lake Washington Vascular was not among the Straitshot customers
24 excepted from the Amended TRO's prohibition on contact.

25 241. March 3, 2009. On March 3, 2009, using stolen confidential Straitshot customer
26 information and in direct violation of the Amended TRO, Prudell, in Washington, e-mailed Rogers

1 Machinery, in Oregon, and solicited Rogers Machinery to move from Straitshot's network to
2 Telekenex's network. Rogers Machinery was not among the Straitshot customers excepted from
3 the Amended TRO's prohibition on contact.

4 242. March 4, 2009. On March 4, 2009, using stolen confidential Straitshot customer
5 information and in direct violation of the Amended TRO, Prudell and Radford, in Washington,
6 and Bani, in California, spoke by telephone with Organics to Go and solicited Organics to Go to
7 move from Straitshot's network to Telekenex's network. Organics to Go was not among the
8 Straitshot customers excepted from the Amended TRO's prohibition on contact.

9 243. March 12, 2009. On March 12, 2009, using stolen confidential Straitshot customer
10 information and in direct violation of the Amended TRO, Prudell e-mailed Boys and Girls Club
11 and solicited Boys and Girls Club to move to Telekenex's network. Boys and Girls Club was not
12 among the Straitshot customers excepted from the Amended TRO's prohibition on contact.

13 244. March 13, 2009. On March 13, 2009, using stolen confidential Straitshot customer
14 information and in direct violation of the Amended TRO, Summers, Prudell and Radford, in
15 Washington, spoke by telephone with Zabit and Ciniero, in California, to plan the solicitation of
16 Pacific Housing Advisors to move to Telekenex's network. Pacific Housing Advisors was not
17 among the Straitshot customers excepted from the Amended TRO's prohibition on contact.

18 245. March 23, 2009. On March 23, 2009, using stolen confidential Straitshot customer
19 information, Prudell e-mailed Boys and Girls Club and solicited Boys and Girls Club to move to
20 Telekenex's network.

21 APRIL 2009 AND BEYOND

22 246. Even after Straitshot terminated its service, Defendants continued to solicit former
23 Straitshot customers using confidential and proprietary business information from Straitshot. For
24 example, on April 6, 2009, Mark Radford emailed U.S. Bearings, a former Straitshot customer,
25 seeking to solicit its business. In May 2009, Zabit and either Prudell or Radford solicited U.S.
26 Bearings to purchase Voice over Internet Protocol (VoIP) service from Telekenex. At the time,

1 Defendants were in possession of confidential proprietary information from Straitshot regarding
2 U.S. Bearings and used that information to solicit business from U.S. Bearings.

3 247. On September 10, 2009, Lorenzo Henderson of Telekenex e-mailed Puget Sound
4 Gastroenterology, a former Straitshot customer, to solicit its business using confidential Straitshot
5 business information: "our records indicate the original CPE at this site was sold through
6 Straitshot and is out of warranty. I am working on getting pricing for replacement CPE ASAP."

7 248. On December 10, 2009, Tom Hunsinger of Telekenex e-mailed Greg Bronemann
8 of Howard S Wright, a former Straitshot customer, and solicited Howard S. Wright's business
9 using confidential Straitshot business information: "Happy Holidays! I wanted to reach out and
10 introduce Telekenex. We are a national provider of voice and data solutions and wanted to see if
11 there are technology initiatives underway that we could participate in? We provide MPLS WAN,
12 Internet Access, Universal Threat Protection, and hosted Cisco Telephony. Are you in the market
13 for any these types of services? Our customers include 7UP, Disney, The Oakland Raiders,
14 Gymboree, Evergreen Healthcare and many more. Please visit our website at www.telekenex.com
15 and give me a call at 972-535-7752."

16 SUMMERS' OBSTRUCTION OF JUSTICE

17 249. Defendant Summers made a long series of false statements to cover up Defendants'
18 wrongdoing. On February 7, 2009, Summers sent Straitshot CEO Andrew Gold an email at 12:33
19 p.m. stating: "The only property of Straitshot that I retain is access to the network which, after this
20 email, I will have terminated entirely." In fact, that was untrue, as he still maintained *at least* the
21 Straitshot laptop.

22 250. On February 11, 2009, Straitshot CFO Phil Howe sent Summers an instant message
23 instructing him to return all Straitshot equipment and property in his possession. According to
24 Howe: "I told him that we needed to get all the Straitshot equipment and property back that he
25 had at his apartment. That night we met up at the Bel Red Storage facility at about 8:00PM. He
26 had rented a van. He told me that he had 'all the stuff from my apartment.' The items consisted

1 of about 10 flat panel monitors, 4 loose computers 'CPUS' and assorted routers returned from
2 customers and other boxes and equipment. Near the end of the unloading I asked him if the loose
3 computers were all the computers he had. He said yes. I asked him where Ashlie Young's
4 computer was. He told me that it and all other unused computers were in the downtown storage
5 locker. I did not specifically ask him about his Dell M-series laptop computer." The "Dell
6 M-series laptop computer" Mr. Howe mentions refers to the primary computer Summers used as
7 Straitshot's Director of Engineering (the "Summers Straitshot Laptop").

8 251. On February 13, after the Second Temporary Restraining Order was served on him,
9 Summers called Howe to say that the Summers Straitshot Laptop was in the Bel-Red storage
10 locker. According to Howe, "I told him that I had not seen it and that we had not talked about it
11 specifically. He then said it must have been in a box. I told him that I would go back and check
12 the locker to be sure." Howe later checked and could not find the Summers Straitshot Laptop in
13 question.

14 252. On February 16, Summers filed a declaration stating under oath: "On February 12,
15 2009, I met with Straitshot CFO Phil Howe and provided him with all the hardware that former
16 Straitshot employees had in their possession, including the laptop Mr. Gold claims is still in my
17 possession [referring to the Summers Straitshot Laptop]." That declaration was false and was
18 intended to obstruct the then pending state-court proceeding.

19 253. In fact, Summers was continuing to use the Summers Straitshot Laptop. On
20 February 14, Summers connected the Summers Straitshot Laptop to a CD-ROM containing the
21 file "Engineering Contacts." On February 16, the same day he swore under oath that the Summers
22 Straitshot Laptop had been returned, Summers loaded a new operating system - Microsoft
23 Windows Vista - over the existing operating system on the computer (Windows XP). Plaintiff's
24 expert Erik Laykin has opined that the installation of Windows Vista was "highly unusual" in light
25 of the pending litigation, and he could not offer "a valid or compelling technical reason for the
26 installation." Laykin added: "However, I have observed that technically sophisticated users who

1 wish to wipe or delete as much information as possible on a computer without using a wiping
2 software utility (which will leave a pattern or signature on the hard drive) may instead install a
3 new operating system knowing that the net result will be the overwriting of significant portions of
4 the unallocated space on the hard drive further removing the possibility of reconstructing
5 overwritten files.” Summers’ loading of a new operating system on the Summers Straitshot
6 Laptop was intended to obstruct the pending state-court proceeding.

7 254. Also on the same day he swore the Summers Straitshot Laptop had been returned,
8 Summers used the Mozilla Firefox web browser software on the laptop - at 3:05:30 p.m. and then
9 again at 5:42:43 p.m.

10 255. On February 17, Summers created a new folder, labeled “Telekenex,” on the
11 Summers Straitshot Laptop, and placed 28 files in it. The folder included files containing
12 confidential Straitshot business information, as well as files relating to Defendants’ scheme for
13 moving Straitshot customers to Telekenex, including files with the titles “Carrier Mappings,”
14 “Transition Plan,” and “Telekenex Transition Team Script.”

15 256. That same day – February 17, 2009 – Phil Howe sent Summers an email at
16 3:22 p.m. stating: “I didn’t find it [the Summers Straitshot Laptop] in the boxes that you delivered
17 to the storage unit.”

18 257. At 7:16 p.m., Summers responded: “Was everything else there? If so, I will check
19 around to make sure it didn’t get missed from my house.”

20 258. At 7:39 p.m., Howe replied to Summers: “All I found were those three that were
21 together (one without the keys – Toms – one without the battery – one that when booted up said
22 test). I looked in all the boxes. I have the little one that was Andrews.”

23 259. Summers nevertheless still failed to return the Summers Straitshot Laptop.

24 260. The next day, on February 18, Straitshot obtained another state-court TRO (the
25 “Amended 2nd TRO”) “requiring Summers to make a diligent search for and produce the
26 Straitshot laptop in his possession.... Defendants are on notice that strict compliance with this

1 Order is required. If evidence of tempering or altering of property subject to this Order is found or
2 observed by Plaintiff in the course of discovery in this matter, the Court will impose monetary
3 sanctions and impose adverse evidentiary inference sanctions based upon spoliation of evidence.”

4 261. Summers still failed to return the Summers Straitshot Laptop. In fact, on
5 February 19, one day after the Amended 2nd TRO was served on Summers, he deleted 10 Excel
6 files on the laptop. On February 24, he ran a program, known as “RegEdit,” designed to delete
7 data on the computer. Laykin found that this operation “permanently destroyed or modified all
8 records and evidence of external devices (hard drives, thumb drives, etc) attached to the computer,
9 records of deleted files and numerous other user-induced activity.” The deletion of files and
10 running of the RegEdit program were intended to obstruct the pending state-court proceeding.

11 262. On February 28, Summers used the Summers Straitshot Laptop to connect to an
12 outside network containing a folder labeled “Strait Shot Transitions.” On March 2, he created a
13 file in the “Telekenex” folder on the Summers Straitshot Laptop named “Customer Issues.” On
14 March 4, he accessed the Telekenex folder on the Summers Straitshot Laptop (now containing 50
15 files) for the last time. On March 5, he shut down the Summers Straitshot Laptop for the last time.

16 263. On March 9, Summers sent a text message to Straitshot CFO Phil Howe: “I finally
17 went through all my closet and found the laptop bag behind a box. I can meet you tomorrow
18 morning to give it to you?” Howe replied: “I am leaving for the airport early. Please give it to our
19 attorney.” On March 13, Summers delivered the Summers Straitshot Laptop to Straitshot’s
20 attorney.

21 264. On March 18, 2009, the King County Superior Court issued an Order on
22 Straitshot’s Motion for Contempt: “[T]he court finds that Defendants have not complied with all
23 aspects of the court’s prior orders as follows: 1) Defendants failed to timely deliver the laptop in
24 Mr. Summer’s [sic] possession which violated the Second Amended Temporary Restraining Order
25 issued on February 18, 2009 Because Plaintiff’s acknowledge that the harm sought to be
26 prevented by restraining orders has occurred and that the case is now one about damages, the court

1 reserves ruling on the sanctions. In accordance with prior orders, the court may impose monetary
2 sanctions after hearing further evidence or impose adverse evidentiary inferences.”

3 265. At a deposition on August 3, 2009, prior to the removal of this case from the
4 Superior Court of King County, Summers testified under oath. Among other things, he denied
5 using the Summers Straitshot Laptop for Telekenex activities once he began working at
6 Telekenex. He denied accessing any of the data relating to Straitshot customers or the design of
7 the Straitshot network, once he began working at Telekenex. He stated that he could not recall
8 using the Summers Straitshot Laptop once he began working at Telekenex. He could not recall
9 even turning it on.

10 266. In fact, during the very time Summers denied at his deposition even possessing the
11 Summers Straitshot Laptop, or turning it on, he was repeatedly using it to implement Defendants’
12 scheme to steal Straitshot’s confidential business information and move Straitshot customers to
13 the Telekenex network.

14 267. At a deposition in this case on November 16, 2010, Summers again testified that
15 under oath. This time he claimed that he mistakenly thought he had been using a Telekenex
16 machine when he was in fact working on his former Straitshot laptop. This testimony contradicted
17 his previous deposition testimony of August 3, 2009 and could not explain why he had
18 deliberately erased files on the laptop, why he installed a new operating system to wipe out
19 existing data, and why he ran the “RegEdit” program to cover up his wrongdoing.

20 268. Summers’ February 16, 2009 declaration under oath, his August 3, 2009 testimony
21 under oath at his deposition, and his November 16, 2010 testimony under oath at his deposition all
22 occurred in the context of pending judicial proceedings, and in all three instances Summers had
23 the intent of interfering with the due administration of justice by providing false testimony.
24 Further, the testimony was closely related to the subject of the pending proceedings.

25 269. Misappropriation and Use of Trade Secrets and Confidential Information.
26 Defendants misappropriated and used and continue to misappropriate and use Straitshot’s trade

1 secrets and confidential customer information. Defendants continue to provide services to
 2 Straitshot's customers and continue to solicit Straitshot's customers using confidential trade
 3 secrets and confidential customer information stolen from Straitshot.

4 270. Impact on Straitshot Customers. Straitshot customers, as well as Straitshot itself,
 5 suffered injury as a proximate result of Defendants' actions. The harm to Straitshot customers
 6 was an inherent part of the Defendants' fraudulent scheme. Customers such as U.S. Bearings have
 7 stated that the service that they received from Telekenex was inferior to the service they received
 8 from Straitshot. Further, Defendants' pressured customers into signing contracts with Telekenex,
 9 without affording customers the opportunity to consider other options for telecommunications
 10 services, because Telekenex pressured Straitshot's customers and represented that Telekenex was
 11 the sole alternative to risking a major interruption of their phone, data, and Internet services.
 12 Customers such as U.S. Bearings were forced into longer-term contracts with Telekenex than they
 13 otherwise would have preferred. In addition, customers were forced into Telekenex contracts
 14 containing termination fees and other provisions less favorable than their agreements with
 15 Straitshot had been. All of these impacts represented harm to former Straitshot customers.

16 SIMILAR RACKETEERING SCHEMES

17 271. Defendants engaged in racketeering schemes against other parties in addition to
 18 Straitshot and looked for other opportunities to force businesses to become Telekenex customers
 19 under duress. In March 2009, former Straitshot employee Tom Hunsinger, then an employee of
 20 AuBeta Network Corporation ("AuBeta"), advised Prudell that "there was another Straitshot going
 21 on" at AuBeta which, like Straitshot, was a managed services provider in Washington State. On
 22 March 27, 2009, Telekenex IXC, Inc. issued a press release stating that it had acquired AuBeta via
 23 an Asset Purchase Agreement.

24 272. Charlotte Russe, Inc. ("Charlotte"), a California company, had signed a multi-year
 25 agreement in 2004 with AuBeta, which was contractually scheduled to change to a month-to-
 26 month obligation on April 1, 2009. On March 27, 2009, Durbhakula and Chuck Vondra, on behalf

1 of Charlotte, had a telephone conference with Hunsinger and Chaney, CEO of Telekenex and
2 Telekenex IXC. Chaney repeated the threat that services to Charlotte would be disconnected if it
3 did not sign a multi-year contract by the end of the day. Durbhakula and Vondra pointed out that
4 Charlotte had negotiated with AuBeta to have the agreement become month-to-month in a matter
5 of days and that, since Telekenex was acquiring AuBeta's assets and contractual obligations, it
6 should also be required to continue to provide uninterrupted services without requiring that
7 Charlotte forego the agreed month-to-month arrangement and enter into a new long-term
8 agreement with Telekenex. But Chaney claimed that, under Telekenex's Asset Purchase
9 Agreement with AuBeta, Telekenex was assuming AuBeta's contractual liabilities only to
10 customers who had agreed to a long-term commitment to Telekenex. Chaney falsely stated that
11 AuBeta was not assigning to Telekenex IXC, and Telekenex IXC was not assuming, AuBeta's
12 contractual obligations and liabilities to Charlotte and that Telekenex IXC had no obligation to
13 continue to provide services to Charlotte, unless it executed the proposed contract amendment
14 with Telekenex.

15 273. On March 30, Chaney emailed Durbhakula to say that the agreement was required
16 to be "executed today or your service could be disconnected by the underlying carriers."

17 274. The statements of Telekenex and Telekenex IXC, communicated by wires in
18 interstate commerce, were false and misleading in violation of 18 U.S.C. § 1343. In fact, pursuant
19 to Telekenex IXC's agreement with AuBeta, AuBeta assigned to Telekenex IXC, and Telekenex
20 IXC assumed, AuBeta's contractual obligations and liabilities to Charlotte. Telekenex IXC thus
21 had an existing contractual obligation to continue to provide services to Charlotte, regardless of
22 any contract amendment or other agreement directly between Charlotte and Telekenex and/or
23 Telekenex IXC. Further, Telekenex IXC was required to pay any accounts payable to the
24 underlying carriers, rather than using those accounts payable as an excuse to threaten to
25 discontinue Charlotte's services.
26

1 275. Telekenex and Telekenex IXC never disclosed to Charlotte that the Asset Purchase
2 Agreement provides that Telekenex IXC “hereby assumes, and [AuBeta] hereby assigns to
3 [Telekenex IXC], [the] (a) obligations and liabilities of [AuBeta] under customer and vendor
4 contracts relating to the Business [of providing and servicing wide area managed networks] . . .
5 and (b) accounts payable relating to the Business” Nor did Telekenex and Telekenex IXC
6 disclose that Telekenex IXC’s assumption of those liabilities was “the sole consideration for the
7 sale, transfer and assignment” of AuBeta’s assets. Instead, Telekenex and Telekenex IXC made
8 affirmative misrepresentations to the contrary. In particular, Telekenex and Telekenex IXC falsely
9 stated that AuBeta was not assigning to Telekenex IXC, and Telekenex IXC was not assuming,
10 AuBeta’s contractual obligations and liabilities to Charlotte, and that Telekenex IXC had no
11 obligation to continue to provide services to Charlotte unless it executed the proposed contract
12 amendment. Telekenex and Telekenex IXC asserted that Charlotte’s service would be
13 disconnected by the underlying carriers, without disclosing Telekenex and Telekenex IXC’s own
14 contractual obligation to pay those carriers’ accounts payable.

15 276. On information and belief, Telekenex and Telekenex IXC knew that they were
16 required to continue providing services to Charlotte, and to pay the underlying carriers as
17 necessary to continue to provide those services, regardless of any contract amendment or other
18 agreement directly between Charlotte and Telekenex and/or Telekenex IXC. Telekenex and
19 Telekenex IXC acted with the intent of deceiving Charlotte and inducing Charlotte to execute a
20 long-term agreement. Telekenex and Telekenex IXC knew their representations were false or
21 made them recklessly and without regard for the truth.

22 277. Charlotte was unaware of material provisions of Telekenex IXC’s Asset Purchase
23 Agreement with AuBeta. Charlotte signed the long-term agreement with Telekenex IXC under
24 duress and in order to avoid the threatened termination of service. Charlotte stated to Telekenex:
25 “[We have] an existing agreement with AuBeta, which will believe should be honored. Despite
26 our multiple requests, no one has explained why this agreement is somehow no longer valid.

1 Instead, we have been presented with a demand that we sign up for a long term commitment or
2 service to 185 of our stores will be cut off today. . . . [I]t has been made clear repeatedly that our
3 service would be shut off if we do not sign up to a long term commitment.”

4 278. Charlotte suffered substantial harm in that it was deprived of the benefit of its
5 bargain with AuBeta and fraudulently induced to enter into an unnecessary, undesirable, and
6 expensive contract amendment with Telekenex and Telekenex IXC.

7 279. On June 4, 2009, Charlotte filed suit in California Superior Court for declaratory
8 and injunctive relief against Telekenex IXC. On June 29, 2009, that court issued a temporary
9 restraining order preventing Telekenex IXC from terminating Charlotte’s service.

10 280. Meanwhile, on June 11, 2009, Telekenex IXC sued Charlotte in King County
11 Superior Court regarding the same agreement. Telekenex IXC served a summons and complaint
12 on Charlotte’s registered agent, but those documents were lost, and Charlotte failed to answer. On
13 July 9, Telekenex IXC moved for default, and the motion was granted the same day. On July 13,
14 Telekenex IXC moved for default judgment, and judgment was entered the next day. On July 24,
15 Telekenex IXC served five writs of garnishment. On July 29, Wells Fargo notified Charlotte that
16 it had received a writ of garnishment. The next day, Charlotte’s counsel called Telekenex IXC’s
17 counsel to discuss vacating the default judgment and the writ. Telekenex IXC refused.

18 281. Charlotte then moved in court to vacate the default judgment and writs of
19 garnishment. The trial court refused, but the Court of Appeals ruled on November 15, 2010 that
20 the trial court abused its discretion in refusing to vacate the default judgment. The Court of
21 Appeals found that Charlotte had stated a valid claim of economic duress: “Charlotte has
22 presented evidence that IXC threatened to allow its service to be cut-off without the notice
23 required in the [agreement] in order to compel Charlotte to enter into a new contract. Charlotte
24 was first notified of a potential disruption of service on March 25, 2009. Two days later Chaney
25 and Hunsinger communicated to [Charlotte’s vice president of technology] that Charlotte’s service
26 would be disrupted unless it agreed to enter into a multi-year extension of its contract. In an email

1 from Hunsinger to both Chaney and [the vice president], Hunsinger thanked [the vice president]
2 for his summary of the circumstances that ‘Telekenex has made it clear that service will be
3 disconnected to nearly 200 of our stores if we do not sign a 36-month contract today.’ At that
4 time, Charlotte’s [agreement] with AuBeta required 60 days written notice before either party
5 could cancel the contract. The five day notice given by IXC was a violation of the [agreement].
6 The threatened termination of services would have left 185 Charlotte stores not able to connect to
7 the Internet, connect to the company data center, use the telephone, process customer purchases,
8 track inventory, keep employee timecards, or access company e-mail. Aside from lost revenue
9 from customer purchases, Charlotte’s goodwill and business reputation likely would have suffered
10 as a result of the disconnection of service. This was sufficient to demonstrate a serious business
11 loss. In order to avoid these serious losses, Charlotte was forced to make a decision to its
12 detriment by entering into a two-year contract extension with IXC.”

13 282. Telekenex and Telekenex IXC made similar threats against other former AuBeta
14 customers. For example, in April 2009 Telekenex and Telekenex IXC told Restaurant Concepts II,
15 LLC (“RCII”), a Georgia LLC with numerous business locations in King County, Washington,
16 that Telekenex IXC would agree to assume RCII’s agreement with AuBeta only if the contract
17 was extended for a period of 36 months.

18 283. Prior to its acquisition of AuBeta, Telekenex coerced other customers in a similar
19 way. For example, in December 2007 Telekenex held hostage Perseus Distribution, Inc. and
20 Perseus Books LLC (collectively, “Perseus”), a California business which had been a Telekenex
21 customer since 2003. In November 2007, Perseus informed Telekenex that it wished to change
22 telecommunications carriers. Perseus made this decision because of poor service by Telekenex,
23 including instances of service interruption.

24 284. At no time prior to December 14, 2007, the date of the scheduled switch, did
25 Telekenex indicate that it would refuse to comply with Perseus’ lawful request. On December 14,
26 Perseus switched carrier from Telekenex to Telepacific Communications.

1 285. However, on the afternoon of December 14, 2007, Telekenex – for the first time –
2 notified Perseus that it would not release its phone and fax numbers to Telepacific
3 Communications, stating that it intended to demand an “early termination fee” of \$120,000.
4 Perseus was unaware of any valid basis for this demand. Additionally, Perseus understood that,
5 under the Telecommunications Act, even if a fee is owed, Telekenex could not refuse to port the
6 numbers until the fee was paid.

7 286. As a result of Telekenex’ wrongful refusal, Perseus suffered harm to its business
8 and loss of sales. When a customer attempted to use any of the Perseus numbers in question, he or
9 she would hear a busy signal.

10 287. In January 2008, Perseus sued Telekenex in U.S. District Court for the Northern
11 District of California, alleging violation of the federal Telecommunications Act.

12 288. Telekenex and Telekenex IXC perpetrated a similar scheme against Eat ’n Park
13 Hospitality Group, Inc. (“Eat ’n Park”), a Pennsylvania corporation operating over 150 restaurants
14 with 10,000 employees, primarily in Pennsylvania. AuBeta provided service to Eat ’n Park
15 beginning in 2007. Telekenex and Telekenex IXC provided no notice to Eat ’n Park of the
16 pending AuBeta acquisition. Beginning on March 25, 2009, Eat ’n Park began to receive new
17 service agreements on Telekenex forms that were materially different from the terms of its
18 existing contract with AuBeta. One of the communications stated that the sender “needs the new
19 service agreements authorized and returned by the end of business on Friday [March 27] to avoid a
20 service disruption.”

21 289. Faced with the threatened termination of its service, Eat ’n Park began exploring
22 new options as well as Telekenex. Eat ’n Park requested additional information from Telekenex,
23 including its ability to provide a system that was compliant with the VISA Cardholder Information
24 Security Program (CISP). Telekenex never provided Eat ’n Park with confirmation that its service
25 was CISP compliant. Eat ’n Park also sent Telekenex a proposed addendum/amendment to the
26

1 new proposed agreement and a proposed release from AuBeta. Telekenex never signed or
2 returned these documents to Eat 'n Park.

3 290. Instead, on Monday, March 30, 2009, Eat 'n Park received a proposed consent of
4 assignment of its existing contract to Telekenex, conditioned on Eat 'n Park's consent to extend
5 the term of the contract. At this point, Eat 'n Park was still waiting for much of the information it
6 had requested from Telekenex. Eat 'n Park did not consent to the conditioned assignment.
7 Nothing in Eat 'n Park's agreement with AuBeta permitted Telekenex to condition a proposed
8 assignment on an extension of the term of the agreement.

9 291. Eat 'n Park had no choice but to continue with costly efforts to secure new service
10 while continuing discussions with Telekenex regarding its ability to service Eat 'n Park's account.
11 On April 7, 2009, having not received satisfactory responses from Telekenex, Eat 'n Park
12 delivered a notice of default and termination that formally terminated its prior agreement with
13 AuBeta. Eat 'n Park incurred significant cost and expense to move off the network, and in April
14 2009 filed suit against Telekenex and Telekenex, IXC in the Western District of Pennsylvania.

15 292. Telekenex perpetrated another fraudulent scheme against Eric F. Anderson, Inc.
16 ("EFA"), a California corporation and licensed general contractor. On April 9, 2006, EFA entered
17 into a master service agreement with Telekenex for VoIP service but experienced unsatisfactory
18 service, including static, dropped calls, and problems with equipment orders. In April 2008,
19 continuing to have problems with Telekenex's service, EFA notified Telekenex that it was
20 terminating Telekenex's services and requested that Telekenex "port" its telephone numbers to a
21 new telecommunications service provider, as required by law.

22 293. On or about May 28, 2008, EFA received a "Customer Notice of Discontinuance of
23 Service for Non-Payment of Bills" from Telekenex, which stated that EFA's account was paid in
24 full, that "the amount outstanding on your account is now \$0.00," but that Telekenex was
25 imposing an early termination fee of \$79,431.75.

1 294. On June 3, 2008, EFA's attorneys sent a letter to Zabit explaining the ongoing
2 problems EFA was experiencing with Telekenex's services, requesting again that Telekenex port
3 EFA's telephone numbers, and explaining that Telekenex's letter and notice of May 28 failed to
4 comply with paragraph 6 of the existing master service agreement, which provided that "[i]n the
5 event of a Telekenex Default, Customer may terminate this Agreement without penalty."

6 295. Shortly after EFA's attorneys sent the June 3 letter to Zabit, EFA's chief financial
7 officer, Geza Paulovits, telephoned Zabit. During their telephone conversation, Zabit apologized
8 for the service problems experienced by EFA, stated that Telekenex was "not going to hold [EFA]
9 hostage," and indicated that he would call CFO Paulovits the following week about porting EFA's
10 telephone numbers. Zabit never called Paulovits back.

11 296. On or about June 24, 2008, EFA received a second "Customer Notice of
12 Discontinuance of Service for Non-Payment of Bills" from Telekenex, which stated that EFA's
13 account was paid in full but that Telekenex was imposing an early termination fee, this time in the
14 amount of \$74,136.30.

15 297. On June 26, 2008, EFA's attorneys again telephoned Zabit and followed up with a
16 letter restating their position. Telekenex never responded. Instead, on July 8, 2008, EFA
17 discovered that Telekenex had disconnected its service, with no warning or notice, and that it
18 could not place or receive phone calls.

19 298. On July 9, 2008, EFA sued Telekenex for intentional misrepresentation in the
20 United States District Court for the Northern District of California, alleging that Zabit, on behalf
21 of Telekenex, represented that no early termination fees would be charged to EFA and that
22 Telekenex would port EFA's telephone numbers. Telekenex's representations were false, and
23 EFA was informed and believes that Zabit either knew his representations were false when he
24 made them or that his representations were made recklessly and without regard to the truth.
25 Telekenex intended that EFA rely on its representations, and EFA did in fact reasonably rely on
26

1 those representations to its detriment and harm. EFA asserted that Telekenex's misrepresentations
2 were committed with malice, oppression, and/or fraud, entitling EFA to punitive damages.

3 299. Telekenex committed a further series of fraudulent misrepresentations against
4 Dealtree, Inc., a California corporation that operates an Internet retail business for which Internet
5 connectivity is essential. Dealtree was willing to do business with Telekenex in part because of
6 Telekenex's representations that its Santa Ana facility included fully redundant connections to the
7 Internet. Specifically, in August 2007, Telekenex made representations orally and in writing to
8 Dealtree concerning the Santa Ana facility, stating that it was a "carrier-neutral facility," that it
9 had "cross-connectivity," and that there were "diverse fiber routes into building." These
10 representations were important to Dealtree because they meant that, if an Internet connection
11 failed through one carrier, Telekenex would be able to switch to another carrier through its
12 "diverse fiber routes" to minimize down time to Dealtree. These capabilities were one of the key
13 reasons Dealtree chose to entrust the hosting of its business to Telekenex.

14 300. In September 2007, Dealtree and Telekenex entered into a two-year written
15 agreement for Telekenex to provide Internet service and server hosting to Dealtree.

16 301. In fact, the representations made by Telekenex to win Dealtree's business were
17 false. Telekenex's Santa Ana facility was neither carrier-neutral (it was dependent on a single
18 carrier), did not have cross-connectivity, and had no diverse fiber routes (multiple Internet
19 connections) into the facility.

20 302. In November 2007 and February 2008, Telekenex's Santa Ana facility suffered
21 catastrophic outages and losses of ability to connect to the Internet, which resulted in all of
22 Dealtree's websites being unavailable for use by customers and clients for many hours. After
23 suffering these outages, Dealtree notified Telekenex in writing that it needed to remedy the lack of
24 redundancy because it had represented that its facilities were fully redundant. After receipt of
25 Dealtree's letter, Telekenex's president personally informed Dealtree that the problem of lack of
26 redundancy would be remedied "within days."

1 303. Telekenex did not fix the problem. Dealtree suffered another catastrophic failure in
2 July 2008 and learned that none of the “fixes” promised by Telekenex had ever been implemented.
3 After the July outage had been ongoing for three hours, Telekenex told Dealtree that it would
4 finally be providing the “diverse fiber routes” it had promised initially by provisioning a “dark
5 fiber” service that normally takes 20 days to activate in “an hour and a half.” When Dealtree
6 checked in again after the “hour and a half” had ended, Telekenex stated that a few more hours
7 would be required but could give no guarantees.

8 304. At that point, due to the multiple severe outages suffered by Dealtree and
9 Telekenex’s repeated failure to cure the problems, Dealtree pulled most of its servers from the
10 Santa Ana facility and found an alternate provider that could actually provide the services that
11 Telekenex falsely represented it could. In order to switch hosting providers, Dealtree was required
12 to call in emergency staff and required its employees and contractors to work many hours of
13 overtime. Dealtree suffered \$2,500 in set up fees for the emergency move to the new facilities and
14 lost sales in excess of \$200,000. On September 3, 2008, Dealtree filed suit against Telekenex in
15 the Superior Court of Orange County, California, alleging fraud and deceit.

16 305. Telekenex committed similar acts against Bryco Funding, Inc. (“Bryco”), a
17 California mortgage lending company located in San Francisco. In 2005, Telekenex and Bryco
18 entered into a contract under which Telekenex promised to provide Bryco with reliable and stable
19 Internet connection services, including both data and voice Internet service (“VoIP”). Bryco was
20 induced into entering the contract by the repeated assurances of Telekenex that it would provide
21 reliable and consistent Internet services and, in particular, that the VoIP system would run without
22 trouble, degradation of call quality, or interruption. Telekenex assured Bryco that the VoIP
23 services it provided were of the same quality as traditional telephone service. At all times, Bryco
24 was induced and was entitled to rely on Telekenex’s representations.

25 306. Telekenex materially failed to live up to the terms of the contract throughout its
26 term. Specifically, Bryco’s Internet connection services were unsuccessfully installed and were

1 not fully operational. Bryco's phone call over the VoIP system were marked by poor quality and
2 in many instances dropped calls that resulted in customer disconnections. These problems
3 represented a substantial hardship to Bryco, because it was not able to communicate properly with
4 its customers and potential customers. Beginning in 2006, Bryco documented in written email
5 messages to Telekenex, as well as orally, the numerous and serious problems that Bryco was
6 having.

7 307. On or about June 1, 2006, Bryco sent Telekenex written notice stating that it
8 considered Telekenex to be in material breach of the agreement, and that unless the call quality
9 problems were cured immediately, Bryco would consider the agreement to be rescinded, and that
10 it requested Telekenex's cooperation in transitioning Bryco's IT and voice needs to another
11 service provider who would be able to perform the job competently.

12 308. Telekenex responded on June 30, 2006 that it was continuing to work on a solution
13 to the call quality and disconnection problems. However, Bryco continued to have numerous
14 serious problems with customer calls and disconnections.

15 309. Consistent with its notice of June 1, 2006, Bryco arranged for the services of
16 another Internet and IT services provider, Telepacific Communications ("Telepacific").

17 310. On July 7, 2006, Telekenex sent a letter to Bryco stating that it had received a
18 notice authorizing a change in Bryco's telecommunications carrier from Telekenex to Telepacific.
19 Telekenex alleged that this was a "clear breach" of the 2005 agreement between Bryco and
20 Telekenex and that Bryco was in default under the terms of the agreement. Telekenex sent a
21 notice that Bryco had failed to pay balances outstanding and demanding \$46,715.02 by the close
22 of business on July 12, 2006 (five days' notice).

23 311. On July 12, 2006, Bryco's CEO sent an email to Chaney requesting a meeting to
24 discuss the situation. Chaney did not respond.

25 312. On the morning of July 13, 2006, Telekenex disconnected Bryco's service, causing
26 it to lose all of its voice and Internet services. Bryco's business was completely shut down, and it

1 was losing thousands of dollars of revenue per hour, as a result of its inability to receive
2 telecommunications service. Customers were unable to contact Bryco for important questions
3 regarding their mortgages, accounts, and other important matters. Customer loan closings were
4 jeopardized.

5 313. On the morning of July 13, 2006, after shutting down Bryco's service, Zabit sent
6 Bryco written notice by fax that Telekenex was exercising its rights to terminate the agreement for
7 default, on five days' notice. Zabit advised that, to restore service, Bryco would need to pay the
8 outstanding balance in full, reconnection fees in the amount of \$13,400.00, and two months'
9 deposit, for a total amount of \$90,115.02. Telekenex further advised that it would restore service
10 only if Bryco signed a new agreement for an additional three-year term and signed a mutual
11 release of all claims, known and unknown.

12 314. The five days' notice and manner of notice of disconnection were completely
13 inconsistent with the tariffs that Telekenex had filed with the California Public Utilities
14 Commission, posted on its website, and incorporated into the 2005 agreement with Bryco. The
15 legal tariffs required seven days' notice, limited the imposition of reconnection fees, and provided
16 for credit allowances due to interrupted service.

17 315. In a telephone conversation on July 13, 2006, Zabit stated that the tariff "didn't
18 apply" to the situation, which was a false statement.

19 316. Despite Telekenex's wrongful actions, Bryco was faced with no other alternative
20 but to submit to Telekenex's demands. Bryco signed both a document entitled "Settlement
21 Agreement" and a new service agreement provided by Telekenex.

22 317. On August 11, 2006, Bryco was finally able to transition its services to another
23 telecommunications provider. It was unable to change its provider without substantial interruption
24 until this earliest available date, and it did make such change with all deliberate haste on such
25 earliest available date.

1 318. On September 12, 2006, Bryco sued Telekenex in the Superior Court for the
2 County of San Francisco, alleging rescission, breach of contract, breach of the covenant of good
3 faith and fair dealing, unfair business practices, tortious interference with economic relations, and
4 other causes of action.

5 319. Telekenex was also involved in a fraudulent transfer to defeat the ability of Robin
6 Reichert ("Reichert"), a California resident living in San Francisco, to enforce a judgment
7 recovered against Net.World, Inc., a Telekenex successor corporation, and Extension 11. On
8 January 5, 2005, Reichert commenced an action against Net.World and Extension 11 in San
9 Francisco Superior Court and in 2006 recovered a final judgment in excess of \$333,000. Between
10 approximately November 2001 and March 2007, Net.World and Extension 11 fraudulently
11 transferred their assets, consisting of tangible personal property, ongoing business, accounts
12 receivable, licensing agreements, intellectual property, trademarks, goodwill, and customer
13 contracts, to a group of other companies, including Telekenex. The transfer of such assets was
14 without consideration of value and was done with actual intent to hinder, delay, and defraud
15 Reichert and other creditors of Net.World and Extension 11. Reichert did not discover the
16 transfers until January 2007 and thereafter brought suit against Telekenex and other defendants for
17 fraudulent conveyance in San Francisco Superior Court.

18 320. When Telekenex IXC, Inc. purchased the assets of AuBeta, Telekenex IXC
19 participated in a scheme to hinder or defraud an AuBeta creditor. On or about June 7, 2006,
20 AuBeta executed two lease agreements with Michigan Street Buildings, LLC ("Landlord") for a
21 term of 120 months with rent increasing on an annual basis. Although AuBeta's rent under the
22 leases for January 2009 was \$45,000, AuBeta unilaterally, and without Landlord's agreement or
23 consent, paid a reduced rent of \$25,000, which was \$20,000 less than AuBeta owed.
24 Subsequently, AuBeta made unilaterally reduced payments of \$25,000 in February 2009 and
25 March 2009 and stopped paying rent thereafter. Landlord informed AuBeta that its failure to pay
26 amounts owed would necessitate Landlord pursuing available remedies for collection, including

1 filing suit. Landlord sent AuBeta notices of default. On or about March 27, 2009, Telekenex
 2 IXC, Inc. executed an asset purchase agreement under which Telekenex IXC received
 3 substantially all of AuBeta's assets, including its cash and cash equivalents, account receivables,
 4 customer contracts, intellectual property, hardware and software, servers, computers, and office
 5 equipment. Telekenex IXC knew, or should have known, that the asset sale would delay, hinder,
 6 or defraud Landlord's claims. On August 25, 2010, Landlord filed suit against Telekenex IXC,
 7 Inc. in King County Superior Court, alleging fraudulent conveyance and other claims.

8 321. Interstate Wire Services. Defendants used and continue to use interstate wire
 9 services to misappropriate and unlawfully use Straitshot's trade secrets and confidential customer
 10 information.

11 322. Income. Defendants obtained and continue to obtain income from their pattern of
 12 racketeering activity, using interstate wire services to misappropriate and use Straitshot's trade
 13 secrets and confidential customer information. Defendants used and continue to use that income
 14 to operate and benefit their enterprise by taking over Straitshot's customers and deriving income
 15 from those customers.

16 323. Fraudulent transfer of assets. On information and belief, a fraudulent transfer of
 17 assets by Telekenex and Telekenex IXC to IXC, Inc. and IXC Holdings, Inc. occurred in August
 18 2010, involving use of mail and wire communications.

19 **V. FIRST CAUSE OF ACTION**
 20 **(Breach of Contract against Prudell and Radford)**

21 324. Straitshot realleges and incorporates herein by reference the allegations contained
 22 above.

23 325. Prudell and Radford have breached their Straitshot Employment Contracts by
 24 using, communicating and divulging Straitshot confidential and proprietary information to and on
 25 behalf of Telekenex and Mammoth, by soliciting Straitshot's engineers to leave Straitshot, and by
 26 retaining and using Straitshot's confidential customer information.

1 326. Straitshot has suffered damages as a direct result of Prudell's and Radford's
2 breaches of their respective Employment Contracts and is entitled to recover those damages from
3 Prudell and Radford.

4 **VI. SECOND CAUSE OF ACTION**
5 **(Interference with Contractual Relations against Telekenex)**

6 327. Straitshot realleges and incorporates herein by reference the allegations contained
7 above.

8 328. Straitshot has valid contractual relationships with Prudell and Radford that
9 continued beyond the termination of their employment with Straitshot including, without
10 limitation, Prudell's and Radford's obligations to: refrain from using, communicating or divulging
11 Straitshot confidential and proprietary information to or on behalf of Telekenex; to refrain from
12 soliciting Straitshot employees; and to return Straitshot's documents upon termination of their
13 Straitshot employment.

14 329. Telekenex had knowledge of Straitshot's contractual relationships with Prudell and
15 Radford.

16 330. Telekenex has intentionally interfered with Straitshot's contractual relationships
17 with Prudell and Radford by inducing or causing a breach of these contractual relationships.

18 331. Telekenex had a duty of noninterference with Straitshot's contractual relations with
19 Prudell and Radford.

20 332. Straitshot has suffered damages as a direct result of Telekenex's interference with
21 Straitshot's contractual relations with Prudell and Radford and is entitled to recover those damages
22 from Telekenex.

23 **VII. THIRD CAUSE OF ACTION**
24 **(Breach of Duty of Loyalty against Prudell, Radford and Summers)**

25 333. Straitshot realleges and incorporates herein by reference the allegations contained
26 above.

1 334. Prudell, Radford and Summers had a duty of loyalty to their employer Straitshot
2 not to solicit or help solicit Straitshot's customers and business prospects on behalf of a
3 competitor.

4 335. Prudell, Radford and Summers breached their duty of loyalty to Straitshot by
5 soliciting Straitshot's customers and business prospects on behalf of Telekenex and by working
6 with Mammoth to port the Straitshot customer circuits to Telekenex while Prudell, Radford and
7 Summers were employed by Straitshot.

8 336. Straitshot has suffered damages as a direct result of Prudell's, Radford's and
9 Summers' breaches of their duty of loyalty to Straitshot and Straitshot is entitled to recover those
10 damages from Prudell, Radford and Summers.

11 **VIII. FOURTH CAUSE OF ACTION**
12 **(Interference with Contractual Relations against all Defendants)**

13 337. Straitshot realleges and incorporates herein by reference the allegations contained
14 above.

15 338. Straitshot had valid contractual relationships with each of its customers including
16 without limitation each of the customers described above.

17 339. Defendants had knowledge of Straitshot's contractual relationships with Straitshot
18 customers.

19 340. Defendants have intentionally interfered with Straitshot's contractual relationships
20 with Straitshot customers by inducing or causing a breach or termination of these contractual
21 relationships.

22 341. Defendants had a duty of noninterference with Straitshot's contractual relations
23 with Straitshot customers.

24 342. Straitshot has suffered damages as a direct result of Defendants' interference with
25 Straitshot's contractual relations with its customers and is entitled to recover those damages from
26 Defendants.

IX. FIFTH CAUSE OF ACTION
(Misappropriation of Trade Secrets Against All Defendants)

343. Straitshot realleges and incorporates herein by reference the allegations contained above.

344. Straitshot's customer information, including without limitation names, contact information, terms of customer contracts, dates of Straitshot contract termination, pricing, details of network architecture, firewall controls, network addressing, and other sensitive data about each customer's network requirements and usage, is a trade secret.

345. Defendants misappropriated Straitshot's trade secrets.

346. Defendants' misappropriation of Straitshot's trade secrets was a proximate cause of damages to Straitshot.

347. As a result of the misappropriation, Defendants received money or benefits that in justice and fairness belong to Straitshot.

348. The misappropriation was willful and malicious.

349. Straitshot is entitled to an award of exemplary damages against Defendants pursuant to RCW 19.108.030.

350. Straitshot is entitled to an award of attorney's fees pursuant to RCW 19.108.040.

X. SIXTH CAUSE OF ACTION
(Violation of the Lanham Act Against Telekenex, Zabit, Chaney, Prudell and Radford)

351. Straitshot realleges and incorporates herein by reference the allegations contained above.

352. Telekenex, Zabit, Chaney, Prudell and Radford made false statements about Straitshot including without limitation that Straitshot was going out of business.

353. Telekenex, Zabit, Chaney, Prudell and Radford's statements deceived or had the tendency to deceive a substantial portion of the intended audience for those statements.

354. Telekenex, Zabit, Chaney, Prudell and Radford's deception was material and was likely to influence purchasing decisions.

1 355. Telekenex's services are, and Straitshot's services were, in interstate commerce.

2 356. There is likelihood if not a probability of injury to Straitshot, including without
3 limitation declination of sales and loss of good will, resulting from the statements.

4 357. Straitshot is entitled to recover from Telekenex, Zabit, Chaney, Prudell and
5 Radford, Telekenex's profits, Straitshot's damages, and Straitshot's attorney's fees and costs.

6 **XI. SEVENTH CAUSE OF ACTION**
7 **(Violation of the Consumer Protection Act Against All Defendants)**

8 358. Straitshot realleges and incorporates herein by reference the allegations contained
9 above.

10 359. Defendants acted unfairly and deceptively including by making statements that
11 Straitshot is going out of business, by using Straitshot's trade secrets and confidential information,
12 and by inducing Straitshot's customers to breach their contracts with Straitshot.

13 360. Defendants' unfair and deceptive acts occurred in the conduct of trade or
14 commerce.

15 361. Defendants' unfair and deceptive acts affect the public interest.

16 362. Defendants' unfair and deceptive acts resulted in injury to Straitshot in its business.

17 363. Straitshot is entitled to recover against Defendants treble damages, attorney's fees,
18 and statutory costs.

19 **XII. EIGHTH CAUSE OF ACTION**
20 **(Federal RICO Claim Against All Defendants)**

21 364. Straitshot realleges and incorporates herein by reference the allegations contained
22 above.

23 365. Defendants have acted unlawfully in violation of 18 U.S.C. §§ 1962(a), 1962(c),
24 and 1962(d).

25 366. Each Defendant is a person liable for his or its conduct under the RICO statutes.
26

1 367. Defendants are engaging in a continuing pattern of racketeering activity by (a)
2 defrauding Straitshot of its trade secrets and using the misappropriated trade secrets through
3 multiple schemes of racketeering involving the use of interstate wire communications in violation
4 of 18 U.S.C. § 1343. (b) harming Straitshot customers in addition to Straitshot; (c) committing
5 similar acts of racketeering against other parties, such as Charlotte, Eat 'n Park, EFA, Dealtree,
6 and Bryco, in violation of 18 U.S.C. §§ 1341 and 1343; (d) spoliation of evidence and obstruction
7 of justice in violation of 18 U.S.C. § 1512(c)(1); (e) false testimony by Summers on February 16,
8 2009, August 3, 2009, and November 16, 2010, which amounts to obstruction of justice in
9 violation of 18 U.S.C. §§ 1503(a) and 1512(c)(2); and (f) fraudulent transfer of assets by
10 Telekenex and Telekenex IXC to IXC, Inc. and IXC Holdings, Inc. in August 2010, involving use
11 of mail and interstate wire communications in violation of 18 U.S.C. §§ 1341 and 1343.

12 368. These schemes satisfy the continuity and pattern requirement because they involve
13 multiple, extensive schemes with a wide variety of predicate acts spanning October 2008 to
14 November 2010 and threatening to continue in the future. They involve multiple victims,
15 including Straitshot and its former customers, and similar acts of racketeering against other
16 parties, such as Charlotte, Eat 'n Park, EFA, Dealtree, and Bryco. The evidence shows that
17 racketeering acts were and are Defendants' regular way of doing business and threatened
18 repetition in the future, even after Straitshot terminated its services and closed its doors in 2009.
19 The closure of Straitshot did not end Defendants' racketeering activity.

20 369. Defendants joined together to form an enterprise whose common purpose is to
21 defraud Straitshot of its trade secrets and use the misappropriated trade secrets to unlawfully cause
22 Straitshot's customers to abandon their Straitshot contracts and move, enlarge, and lengthen their
23 business to and with Telekenex, for the benefit of their common enterprise and its individual
24 members ("Defendants' Enterprise"). Defendants' Enterprise engages in interstate commerce and
25 is ongoing.

1 370. Defendants each receive income from their pattern of racketeering activity and use
2 or invest that income to establish, operate, or acquire an interest in Defendants' Enterprise
3 ("Defendants' Investment").

4 371. Defendants also used Defendants' Investment to directly and wrongfully compete
5 with Straitshot and to fund further theft and use by Defendants of Straitshot's trade secrets, and to
6 use the misappropriated trade secrets to further wrongful inducement of Straitshot's customers to
7 abandon their Straitshot contracts.

8 372. Each Defendant conducts or participates in the conduct of Defendants' Enterprise's
9 affairs through a pattern of racketeering activity for the benefit of Defendants' Enterprise and each
10 Defendant's benefit.

11 373. Each Defendant has conspired and continues to conspire to violate 18 U.S.C. §§
12 1962(a) and 1962(c).

13 374. Straitshot has been and is being damaged by Defendants' Enterprise and by
14 Defendants' investment of income in Defendants' Enterprise.

15 375. Straitshot is entitled to recover against Defendants treble damages, attorney's fees,
16 and costs.

17 **XIII. NINTH CAUSE OF ACTION**

18 **(Washington Criminal Profiteering Act Claim Against All Defendants)**

19 376. Straitshot realleges and incorporates herein by reference the allegations contained
20 above.

21 377. Defendants have acted unlawfully in violation of RCW 9A.82.001 *et seq.*

22 378. Each Defendant is a person liable for his or its conduct under the Washington
23 Criminal Profiteering Act.

24 379. Defendants joined together to form an enterprise whose common purpose is to
25 defraud Straitshot of its trade secrets and use the misappropriated trade secrets to unlawfully cause
26 Straitshot's customers to abandon their Straitshot contracts and move, enlarge and lengthen their

1 business to and with Telekenex, for the benefit of their common enterprise and its individual
2 members (“Defendants’ Enterprise”).

3 380. Defendants engaged in a continuing pattern of criminal profiteering activity by
4 defrauding Straitshot of its trade secrets and using the misappropriated trade secrets to wrongfully
5 induce Straitshot’s customers to abandon their Straitshot contracts and move their business to
6 Telekenex for the financial benefit and purpose of operating the Defendants’ Enterprise and for
7 each Defendant’s financial gain in violation of the Washington Criminal Profiteering Act.
8 Defendants acted with a common intent toward and scheme toward and concerning Straitshot and
9 acted through the Defendants’ Enterprise.

10 381. Defendants have stolen Straitshot trade secrets valued at more than \$5,000.

11 382. Defendants have each knowingly received proceeds derived from Defendants’
12 Enterprise and used such to establish or operate Defendants’ Enterprise and for their financial gain
13 (“Defendants’ Investment”).

14 383. Defendants conspired to engage in a pattern of criminal profiteering for the purpose
15 of receiving income from the criminal profiteering and using that income to operate the
16 Defendants’ Enterprise.

17 384. Defendants used Defendants’ Investment to directly and wrongfully compete with
18 Straitshot, to fund further theft and use by Defendants of Straitshot’s trade secrets, and to use the
19 misappropriated trade secrets to further wrongful inducement of Straitshot’s customers to abandon
20 their Straitshot contracts.

21 385. Straitshot has been damaged by Defendants’ Enterprise and by Defendants’
22 investment of profiteering income in Defendants’ Enterprise.

23 386. Straitshot is entitled to recover against Defendants treble damages, attorney’s fees,
24 and costs.

**XIV. TENTH CAUSE OF ACTION
(Promissory Estoppel Against Mammoth)**

387. Straitshot realleges and incorporates herein by reference the allegations contained above.

388. In November 2008, Mammoth agreed to defer payment of \$120,000 of fees Straitshot owed Mammoth and to permit Straitshot to pay subsequent invoices when they came due.

389. Mammoth understood that the Deferral Agreement was a critical component to Straitshot's restructuring plan and that Straitshot was relying on the Deferral Agreement to make its plan work. Mammoth understood that absent the Deferral Agreement, Straitshot would have pursued other restructuring options, including potentially filing for bankruptcy and selling off its assets to pay secured creditors (which did not include Mammoth) or, alternatively, moving all of its circuits from Mammoth to one of Mammoth's competitors.

390. As anticipated by Straitshot and Mammoth, Mammoth's approval of the Deferral Agreement caused Straitshot to abandon its other restructuring options, including potentially filing for bankruptcy and selling off its assets to pay secured creditors (which did not include Mammoth) or, alternatively, moving all of its circuits from Mammoth to one of Mammoth's competitors, either of which would have provided value to Straitshot's secured creditors and permitted Straitshot to remain a going concern.

391. Straitshot's reliance upon Mammoth's promise was justified.

392. Injustice can be avoided only by enforcing Mammoth's promise and compensating Straitshot for the significant damages resulting from Mammoth's duplicity.

**XV. ELEVENTH CAUSE OF ACTION
(Breach of Contract Against Mammoth)**

393. Straitshot realleges and incorporates herein by reference the allegations contained above.

1 394. Pursuant to the Written Contract, Mammoth was forbidden from disclosing to third
2 parties, confidential and proprietary information regarding Straitshot's system including pricing.
3 Mammoth breached the Written Contract by divulging confidential and proprietary information,
4 including pricing, to Straitshot's competitor Telekenex.

5 395. Straitshot has suffered damages as a direct result of Mammoth's breach of the
6 Written Contract and is entitled to recover those damages from Mammoth.

7 **XVI. TWELFTH CAUSE OF ACTION**
8 **(Tortious Interference With Contractual Expectancy Against Mammoth)**

9 396. Straitshot realleges and incorporates herein by reference the allegations contained
10 above.

11 397. Straitshot had valid contractual relationships with Voxitas.

12 398. Mammoth had knowledge of Straitshot's contractual relationship with Voxitas.

13 399. Mammoth has intentionally interfered with Straitshot's contractual relationship
14 with Voxitas by inducing or causing a breach of this contractual relationship.

15 400. Mammoth had a duty of noninterference with Straitshot's contractual relations with
16 Voxitas.

17 401. Straitshot has suffered damages as a direct result of Mammoth's interference with
18 Straitshot's contractual relations with Voxitas and is entitled to recover those damages from
19 Mammoth.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff Straitshot Communications, Inc. prays for judgment as follows:

- 22 A. For money damages in an amount to be established at trial;
23 B. For exemplary damages;
24 C. For an award of Straitshot's attorneys fees and costs; and
25 D. For such other and further legal and equitable relief as the Court may deem just and
26 proper.

1 DATED this 6th day of December, 2010.

2 Respectfully submitted,

3 SUMMIT LAW GROUP PLLC

4 By /s/ Jessica L. Goldman

5 Jessica L. Goldman, WSBA #21856

6 SUMMIT LAW GROUP, PLLC

7 315 5th Avenue S, Suite 1000

8 Seattle, WA 98104-2682

9 Phone: 206.676.7000

10 Fax: 206.676.7001

11 *jessicag@summitlaw.com*

12 Leonard A. Gail

13 (Admitted *Pro Hac Vice*)

14 MASSEY & GAIL LLP

15 50 East Washington Street, Suite 400

16 Chicago, IL 60602

17 Phone: 312.283.1590

18 Fax: 312.379.0467

19 *lgail@masseygail.com*

20 *Attorneys for Plaintiff*

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Leigh Ann Collings Tift
LITTLER MENDELSON, P.C.
One Union Square
600 University Street, Suite 3200
Seattle, WA 98101-3122
ltift@littler.com

A. Chad Allred
ELLIS LI & MCKINSTRY
Market Place Tower
2025 First Avenue, Penthouse A
Seattle, WA 98121
callred@elmlaw.com

Kenneth J. Diamond
WINTERBAUER & DIAMOND PLLC
1200 Fifth Avenue, Suite 1700
Seattle, WA 98101
ken@winterbauerdiamond.com

DATED this 6th day of December, 2010.

/s/ Cheryl A. McCrum
Cheryl A. McCrum
Legal Assistant
SUMMIT LAW GROUP, PLLC
315 5th Avenue S, Suite 1000
Seattle, WA 98104-2682
Phone: 206.676.7000
Fax: 206.676.7001
cherylm@summitlaw.com